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THE EQUALITY OF THE STATES.

*Meeting of the Breckinridge and Lane Association of Philadelphia,
Nov., 1860.*

MR. CHAIRMAN AND FELLOW-CITIZENS:—Next Tuesday, which is five days off, we shall cast our votes on a question thought to be the most momentous we have voted on since the formation of the Federal Constitution, and yet it is only whether one or another man shall sit in the Chair of State a mere speck of time—four years—under written limitation for good or ill, with the Judiciary and Congress over his head, and the Constitution above them all. If Mr. Lincoln comes in, it will probably be with a majority against him in both houses of Congress, certainly in the Senate, and with no sort of chance, his first Congress being over, of ever getting out of a minority. If Mr. Breckinridge comes in, we have the man of our choice; a man lately elevated to the second place in the nation when scarce constitutionally of age; one of those rare instances of a citizen who, not striving at public favor, without resorting to a single unworthy art, or ever seeking popularity by stooping, has captivated the affections of his countrymen. At Rome, you remember, to be fortunate was a virtue; that grand people understood human nature as well as war and policy; and I do not believe that we, though much smaller people, are mistaken in this citi-

zen, who just receives and accepts what others toil after. He is a true man, fellow-citizens; he will never disappoint you. What, then, is the matter with us? Why all this anxious inquiry, these threats and mutterings, that come to us from so many quarters, and make a sort of atmosphere in which we draw with difficulty our political breath? There are seasons, fellow-citizens, in which it is well to look at something else than party lines; to examine the rules and principles that should regulate them; to inquire not only whether we shall succeed, but whether we have earned and are deserving of success; and I propose to occupy the hour you have assigned me in an endeavor to show, returning a little to principle and the past, arguing from yesterday as well as to-day, that the great Democratic party, so long in the ascendent, unless it comes to and takes a reckoning, or, to bring the metaphor from sky and sea to dry land, unless it stop and inquire its way, is like to lose itself. The problem to be solved is the old one of North and South. They tell us, in toasts and speeches, there is no North, no South, but that is not so; there is a South and there is a North, and for a long time they have not harmonized. Gentlemen, you and I are Northern people; I am a Northern man, I live in the North, my feelings, interests, prejudices, are all Northern, and I will add that I never crossed from below the Potomac, and came upon the fields and humming cities of the North without congratulating myself that my lot was not cast in the planting country, cultivated by slave labor, with a meagre population, a lower civilization, and infinitely less capability for that magnificent future which it seems to be the birthright of every citizen of the United States to swell himself up and insist upon. Gentlemen, many a good citizen of the North says: I love my Southern brethren as well as you do, but I cannot agree to the extension of slavery. That is the word, the extension of slavery. Now, there I disagree with him, and the question to which I mean to call your attention is, whether he can be right, whether in a confederated, not a consolidated government, a government existing only at the good-will of the parties to it, not by force, a union of sovereign States, you can without any Constitutional provision for or against it restrict slavery to the States where it was found when the Constitution was formed? That is the question; and there I maintain the Democratic North must yield every inch of the ground, or we can never get ourselves where we ought to be. Can the North and South acquire territory by joint treaty, joint purchase, or war jointly waged by all the States, and then exclude from such common acquisition the whole capital and labor of the South? For all the capital and all the labor of almost all the South are slaves. Can we say to them, your capital and labor are noxious, your institu-

tions are too bad to be propagated, they ought to die out; we agreed, in 1789, to tolerate them within your own borders, but we agreed to no more than that; we never agreed that when the thirteen States became thirty-two the nineteen new ones should be poisoned. Now, I grant that if the people of Blair county, within the consolidated sovereignty of Pennsylvania, or a French department, or an English shire, desired to hold slaves; or if they desired to introduce the institutions of slavery into a colony conquered or planted by France or England, or, were it constitutionally possible, by Pennsylvania, the government at Paris, London, or Harrisburg, might well laugh at them. But how is it when you come to apply the rule not among counties, but among sovereign States, each equal to the other, each independent of the other, each having yielded to the common fund for common benefit, a scrupulously weighed and carefully described portion of their several rights, and no more or less; and this right of going with their property into newly-acquired territory, is neither granted nor forbidden? Can you exclude from ~~such~~ territory the citizens of a State without impairing its sovereignty? If, instead of holding negroes, the Southern men were themselves negroes, what of that, if we have come into an equal union with them? Nobody pretends to find in the Constitution that the framers of it have provided in any manner whatever for this case of purchases of territory from France and Spain, and conquests from Mexico. Our ancestors did not know these things were to happen. What is the consequence? Why does not the fact of sovereignty solve the problem? Can it be that sovereign and equal States have not sovereign and equal rights? I speak, observe me, of sovereignty and equality in no extreme sense—not as a stickler for it—not as what is called a State's rights man; but as any man must admit it to be, who admits it at all. The States are equal before the Constitution, as you and I, Mr. Chairman, are equal before the law. You may be a better man than I am, my superior in mind, body, and estate; you are, perhaps, more virtuous, more rich, more pleasing and powerful than I am. But suppose you were to tell me so, what would I say to that? what sort of position would yours be if, on a question of property or right between us, you should say to the tribunal before which we stood as equals: "Look at that man; he is not my equal; he is not as good as I; he is a sinner; let him go and repent; he is pestilential; let him go and wash himself?" Sir, institutions are to a country as character and qualities are to a man. To stigmatize them is to stigmatize the country; to refuse to treat with a country, or deny its equality with you because they are a republic, and not a monarchy, or because they are a monarchy and not a republic, because they admit or exclude from



their borders this or that thing, is as insulting and intolerable as it would be to you or me to set us aside as lacking character, honor, or reliability. Sir, it is a simple truth which passes all saws, that no man in a free country must say to another, "I am better than you." And how must it be with the States? Can any man show me how we ever can settle with the South, as long as we say to them, you are not our equals? I say nothing of the injustice, the rank absurdity, of turning them off their own property, possessions acquired by their policy, their treasure, their blood; of the disaster and ruin entailed on them by excluding an agricultural people from the new lands, and cooping them up to plough the poor and exhausted.

I say nothing of the fears of those who believe that, by letting the South in with their slaves, you keep off white labor, as if labor did not find its level just as water, air, trade, or any thing else does; as if there was any danger of a planter taking his slaves to the North, or of white labor wanting to go to the rice-swamps or cotton-fields. I confine myself to the insult, to the abstraction, if you choose to call it so, of sovereignty; to the empty honor, if honor be empty; and to the question whether you ever met with a man fool enough to say to his equal, "I am your superior." Would you have our fellow-citizens submit to that? Would you desire to associate with them if they did submit to it? Would you have such a friend? Would you form a union with such a State? Fellow-citizens, I say to you, if there was a clause in the Constitution which, by the most express words, and in the clearest language authorized us to dam up slavery in the old States, and exclude it from these Territories, it would have to be altered; no writing could tie the States together on such terms. The Constitution has been altered more than once, and it would have to be altered again if it contained any such provision. Written constitutions are very good things, but every thing is not possible to them, and it is one of those political facts which we must make the best of, that governments are not to be struck off at a heat, even by the wisest heads. Governments are alluvion; time, more than pen and ink, goes to the making of them; and when we find, as in this case of the Territories, that nothing has been written to guide us, we must direct ourselves with measure and moderation. When things not provided for turn up, what we have to do is to give and take, to "use all gently," and get along as well as we can. Even where we have the text of the Constitution laying down the rule, we must expect to see it modified as ages pass over it. Nobody is as wise as posterity. See how the working of our machinery has already affected our institutions. Do not you suppose those who made the Constitution would

be a little surprised, could they come back and look at the political machine, which they set going in 1789? Here is this Territorial question, involving the happiness of a country more extensive than the thirteen United States of that day, wholly unprovided for. There was the mode of electing the President, where the entire system of taking the election from the people and giving it to the electors, which was supposed to be a great political contrivance, has proved good for nothing, and as the thing works, the people make the President just as if there were no electors but themselves. The Senate was intended as a check on the appointing power, but rotation in office has given to the President uncontrolled power over a legion of office-holders; and the rush for place gives form and pressure to our institutions, which was not dreamed of. So different was this at the start that Washington was at one period of his administration seriously embarrassed for want of persons to come into his Cabinet; no President now-a-days labors under such an embarrassment, I believe. Now everybody wants office, and all have become competent to it. I once heard a gentleman, now no more, say that when the first Constitution of Pennsylvania was framed, giving as it did very large powers to the Governor, it was taken for granted by every member of the Convention as a thing at that day supposed to admit of no doubt at all, that none but the most upright and best man in the State would ever be elected to the Chair of State. Ye men of Pennsylvania, when you go to see Mr. Andrew Curtin inaugurated, think of that! A Committee of the Senate was appointed at its first session to consider the title which the President ought to bear, and they reported in favor of styling him "His Highness, the President of the United States of America, and Protector of their liberties." Imagine the meeting, gentlemen, between his Highness, the President, and his Royal Highness, the little Prince of Wales!

I remind you of changes past, and tell you there are more to come, as a sort of hint to that national vanity, which seems to possess and persuade us that our institutions are perfect, and provide for all cases, and that on this territorial question, unless our Southern friends can turn to the text of the Constitution, and show that they are right, they must needs be all wrong. It is not so. Our institutions are not perfect, they are imperfect. We must respect great truths, and we have as much need to fall back upon human justice and forbearance towards one another, here in the United States, as they have in any part of the world.

But let me go on and show you how this thing of slavery, which is in the Constitution of the United States, and an institution admitted and recognized as part of it, has worked. It is often said that the slavery question was the difficulty in the States coming together; and



so partially it was, for South Carolina and Georgia, which were not then stocked with black labor, refused to come into the Union on any terms, which restricted their importation of negroes from Africa, to which the other States objected, and the compromise was effected, which limited that trade to a period not to extend beyond the year of 1808. But it is a mere mistake to suppose that the question of slavery made any other difficulty in the Convention. Fanaticism had not then showed its head; the North, as well as the South, held slaves, and the slave-trade, as a branch of commerce, was insisted on by a portion of New England. The difficulty was between the large and small States; there lay the difficulty; it was in settling their representation in Congress. Under the Confederacy, voting by States, they had all been equal; Delaware casting one vote, and Pennsylvania no more. The small States were afraid of being oppressed. They cited, as precedents for what they asked, an equal representation in both Houses of Congress, the case of the Confederacy and that of the Republic of Holland, where the seven united provinces, not only cast equal votes without regard to population, but where the central government could not lay a tax, nor make a treaty, nor declare war, nor agree to peace, without the unanimous consent of all the States. The difficulty in the Convention, may be stated in the single word sovereignty; that was the leg the States halted on; they were jealous of their sovereignty, and loath to part with it; and naturally the smaller the State the greater its unwillingness; and I venture the assertion that until the territorial question first presented itself, when Missouri was to be admitted to the Union in 1819, it cannot be shown that slavery was ever in the programme of our difficulties. Virginia, and she was followed by the greater part of her Southern brethren, always set her face against it, till driven from her position by the attempt made in 1819, to exclude the whole South from the newly-acquired territory; an attempt which succeeded to the extent of what is called the Missouri Compromise, by which slavery was excluded north of the line 36 degrees 30 minutes. Virginia was the first country, I believe, in the whole Christian world, to abolish the slave-trade, after long protesting against it, in vain, while an English colony. Her gift of the Northwest Territory from which have come so many States, was accompanied by the total exclusion from it of slavery. Her members on the floor of Congress held strong antislavery language. In the year 1816, only three years before the revolution made by the Missouri question, John Randolph moved a Committee, of which, of course, he was chairman, and one of the members of which was Mr. Hopkinson, of this city, to put a stop to what he denounced, with all the bitterness of his eloquence, the slave-

trade in the District of Columbia. It was a member from Virginia, who moved, in the first Congress which met, to impose a heavy duty on the importation of slaves, in order to break down the traffic, if possible, before 1808. When, in the year 1800, the bill passed to abolish the trade at its earliest constitutional period, it had in its favor every vote present in the House of Representatives from the South, except four. Search the debates in Congress, prior to the Missouri question, and find if you can, coming from the South, on the subject of slavery, more than some little occasional ebullition of temper on the part of a member here or there, when touched too hard on this sore place. Nothing was done, not much was said, excepting by South Carolina and Georgia, when their importation was interfered with, which might not have come just as well from Northern members as Southern. There was then indeed no North, no South. Virginia led on the slavery question, and she led against it, and the rest went with her.

I challenge contradiction, that this was a continuing fact down to the time of the Missouri question, the territorial subject as it first appeared; and since then, sir, it has never been fairly quieted, and, I believe, never will be while the Democratic party of the North alloys its territorial doctrine, and hesitates to occupy the true, solid, simple, and only tenable position, that the jointly-acquired territory is equally open to all citizens of the Union which acquired it. Gentlemen of this Democratic Club, our difficulty has been that we were on ground not true, not solid, not simple, and therefore not tenable; and we have just been miserably beaten at the polls ~~by~~, among other reasons, and for the only reason, if you strike out the tariff and local questions, because we have placed ourselves in a false position on the territorial question. The principles on which party rallies ought to be elementary, and intelligible, not artificial or strained. How many persons do you suppose there are in this room who could satisfactorily explain what the exact difference was at Charleston and Baltimore, on which the Democratic party split?

Be sure, fellow-citizens, that when we are afraid to maintain great truths, or seek to disguise them in subtilties and refinements, we make a mistake of the first order. Sir, I am told we are very poor; that the party is not only down in spirit, but in pocket, too; but if a few dollars, though they were our last, could be found in the whole Democratic treasury, or could be raised by hook or by crook, to print and circulate in the North some copies of the debate on the Missouri bill, they would be well spent. We should there see, forty years too late, but still to good purpose, what really few of us are aware of, the egregious damage done to our institutions by the whirlwind which at

that time prevailed in the North, and blew reason to tatters. Never did storm blow so hard and so long, and not bring so much as a capful with it of the wind of doctrine. It was all declamation. No reflecting man now could read the Northern speeches then made without being shocked at their nakedness of logic; no lover of his country, without lamenting to see such an unbalancing of the public mind. They teach the painful lesson how small is the voice of reason when passion is on the wing. They are not only an index to the history of foul thoughts ever since, but they let down and lower our confidence in the future; for they plainly show that good men and virtuous statesmen can be blind guides. The question was plain, and the answer to it within reach of the meanest capacity, not clouded by prejudice: it was, will you abridge the sovereignty of the old States? How can you on the sovereignty of the new States lay a restriction, which the State once admitted to the Union you have no right to insist upon? Sir, it is a little late to argue the Missouri question, and it might be difficult to bring better men to the argument than those of 1819-20. Read those debates, and be satisfied where our present mistake began; that our first error was there; that the Southern States were right; that their position was fully and absolutely correct, and nothing but our feeling might and forgetting right, forced that arrangement, where the South, in an evil hour for them and us, gave way, when they ought to have stood fast. Their yielding has been the signal of disorder ever since. I could understand the North saying, the Constitution has made no provision for this case of the Territories; we abhor slavery, will not give it an inch more than we are compelled to give, and rather than have any more slave territory, we will have no more Union. That would have been intelligible. But tell me how to understand them when they said, you are bound to stay in the Union, when the equal rights of the States are demolished? There was no Northern speech on that great occasion, which exhausted all our eloquence, which answered, or approached an answer, to the Southern interrogation: What are you going to do with the equality of the States? There were two questions then put, which have never been answered. *First*. Where is the equality of the States, if we can't go into the Territories as well as you? and *Second*. How can you effect this act of our degradation without yourselves committing an act of absurdity; namely, admitting Missouri as a sovereign State, the equal of Pennsylvania and Virginia, and yet without the right which none would deny to Pennsylvania and Virginia, of moulding their own government to whatever is not forbidden by the Constitution of the United States? What is to prevent Pennsylvania establishing slavery, lying

north of $36^{\circ} 30'$? Nothing. Then, what is to prevent Missouri? Nothing. Then where is your Missouri Restriction? Where is your Compromise? I would like you to tell me where we should have been, what the right and wrong of the case would have been, if the State of Michigan, lying north of $36^{\circ} 30'$, and, admitted to the Union in 1836, and therefore after the Missouri Restriction, had, the day after coming into the Union, established slavery. There would have been the right to prevent it? Well, gentlemen, we did not inflict upon them the whole injury, as at first proposed, of a total exclusion from all new territory, North or South; but the Compromise was made on $36^{\circ} 30'$, and our Southern friends were glad to submit to the wrong, and settle with us, thus proving their love at that day of the Union and their attachment to us all; and thus did the South yield the point of their equal rights as members of this Union; thus did they make a compromise, which was a surrender. We gave them nothing; they gave us what can never be given with impunity by State or man, the right to say they had been compelled to yield something where there was no right to ask any thing.

This was in 1820, and now in 1860, they in their turn offer to our mouths what the Northern stomach cannot brook. But that is anticipating a little. In 1854 the South yielded to Northern temptation as in 1820 they yielded to Northern menace, and the Missouri Compromise was repealed—a political mistake as great as was its enactment—a mistake which the country would take back if they could, but they never can. Thirty-six years had passed since 1820, and the compromise had become part of our political flesh; or rather, it was like a ball sticking in a man's ~~body~~, which well nigh killed him to get there, but which having in a course of years folded and bedded itself in his fibres, extracting it is infinitely more perilous than letting it alone. Every thing was torn to pieces to get it out, and a gaping wound remains to be healed. I need not call on you to recollect the difficulties of the country since, and under which the Democratic party has been staggering. Kansas bills, English bills, Lecompton and Anti-Lecompton, minorities in Congress and at the polls, and discontent everywhere have been our portion, until having met at Charleston to choose a candidate whom, with the aid of the God-send we had in the John Brown affair, to apply such a name to that atrocity, we could have carried with all ease, we broke up with two candidates; and here we are to hear our enemies, the Wide-awakes, beating their daily drum and parading our streets, in all the assurance of speedy and complete victory. What does this bring us to?

In 1819 we wanted to violate, out and out, the rights of the South;





in 1820, we compromised on an act of partial violation of them; in 1854 this act, which was the Missouri bill, was repealed from the statute-book, but not from Northern hearts; and the North, infinitely stronger than it was in 1820, has never been quiet under it, but, to tell the whole truth in plain words, has been growing less and less democratic ever since; while the South, getting daily more restive under her daily increasing inferiority to the North in population and resources, now, like the weaker man asking bonds for good behavior of his more muscular neighbor, demands of us not only to admit that the States are equal, but to go on and say that equality means things that to the North are neither palatable nor intelligible. Mr. Chairman, perhaps I had better advance no further; this is a party meeting, and I am party man enough to be addressing you; you may say, if I go further I shall get upon the rocks. Sir, there are only two chances for us: one is the chapter of accidents, for no one knows what to-morrow will bring forth; the other is the utter and instant rejection by the Northern Democracy of all compromise with this infernal antislavery spirit. In other words, to go back and stand where every man once stood. This you may say is easier said than done; but can you, Mr. Chairman, or you, fellow-citizens, tell me what else will do?

A word more, before I sit down. Sir, did you ever ask yourself the question, what troops they would be, and in what age, who first would enter this town, sword in hand, perhaps to burn it to the ground, perhaps only to lay it under contribution, of a few millions paid in the market-place? We are at profound peace with all the outer world, and such an event—though time will assuredly bring it forth—you will say now seems remote. But suppose we were surrounded with threatening enemies, why might it not happen to-day? Very well;—faction is turned loose among us, the worst enemy, and our frame of government is threatened.

Is there no danger to-day? Our fellow-citizens are sinners,—man-stealers and slaveholders; will not set their slaves free; will carry them into the territories! But how often must we be reminded that father Abraham was a man-stealer, a slave-breeder, a slaveholder, and that he carried his slaves into the territories—that all the Jews, the chosen people of God, held slaves under the law derived immediately from God himself—that our Saviour coming on earth to teach and redeem us, found the world teeming with them; white as well as black, some of them poets, painters, authors, men of genius and learning—that he never pronounced slavery a sin, but said, Slaves, obey your masters—that our teachers of to-day, the Abolition party of the North, had slaveholders for their fathers and grandfathers. As to our English

teachers, everybody knows they forced the slaves on us; but as one of our catalogue of sins is that we call negroes chattels, it may gratify you, as a lawyer, sir, to be referred to page 561 of Mr. George Chalmers, an English gentleman's collection of the opinions of the English judges and other eminent persons on subjects connected with British commerce, and read what negroes really are; you will there find the opinion of ten of the twelve judges of England, the other two being absent, I suppose, from the consultation, in these words: "We do humbly certify our opinion to be that negroes are merchandise." This paper, all of which I do not trouble you with, is styled in the book: "The report of the whole of the judges upon the Memorial of the African Company, touching the assiento, in 1689."

It is signed with ten names, the first of them being that of the famous Chief-Justice Holt; and if the opinion was given in 1689 it dates in what the English regard as their best day, just after what they call their glorious revolution. Sir, chattels mean, as you know, *cattle*, and people might be content to be called cattle, who never would agree to be set down as merchandise.

Gentlemen, when we find how many frantie and wicked fools are among us, and see thousands of good and well-meaning citizens voting their ticket, and certainly not horror-struck at their doctrine, it is enough to make one despair of the Republic—of this Republic—of any Republic! They tell us all this Southern uproar means nothing, and is nothing but spleen and ill-humor—that it is nothing but the process of reconciling a minority, to the now inevitable hour when Northern population comes in with final predominance over them. Sir, are we so ignorant as not to know the South has always been in a minority from the very foundation of the government to the present hour; and that their strength henceforth, will consist exactly as hitherto it has, in their union among themselves. It is a great mistake the extreme Northern party is making, to suppose that the South is down, or ever will be. As long as they hold slaves they will never be down.

But what will be the fifth act of this drama of folly? What are your thoughts on the *end* of the present discontents? Will the South act, or only pass resolutions? Whatever is or is not behind the curtain, I venture to predict one thing, and that is, that among the gentlemen Lincolmites, now so gay, who are rubbing their hands at the prospect of power, and ridiculing the idea of danger, there will be plenty of blank faces and cow feathers before the fourth of March. We shall see—for quite enough is coming to throw daylight on that—who are the chicken-hearted. There will be a crisis, as the merchants say, depend on it, that will put their nerves to their trumps. Let them have





their much longed-for opportunity of what they call *putting down the South*, and we shall see how they will do it. The South may not go all lengths, but they will do something, and it will be serious. It is true that with a Congress, or even a Senate against him, Mr. Lincoln's views and measures, as announced by himself and his followers, cannot be carried out.

He can hardly, without Congress, do as much at Washington, as he says he did in Ohio, when he threw, brave man! "fire-balls into Kentucky." But regard the case as you may, half the Union is thoroughly provoked, has been grossly injured, and the act of throwing the whole South overboard, and in a Convention avowedly sectional, selecting a President who is pledged to their destruction, to a policy which is at once unconstitutional, and their ruin, may well be regarded by them as an act overt enough. I hope not, but who shall say nay, if they choose to think so? I shall conclude, gentlemen, with venturing an opinion, which really, as a Pennsylvanian, I am half ashamed to utter, that we shall get through this crisis, if we get through at all, mainly by the good sense and good management of a certain State, which is not Pennsylvania, but a near neighbor of Pennsylvania, a State which has always been the pilot of the Union, and was the pilot of the Confederacy before the Union was formed—I mean Virginia. We call ourselves the Keystone, and perhaps we are, but our next door neighbors are more than that. They, with Massachusetts, made the revolution—they had more to do with carrying it through than any other State, they brought about the Federal Convention that made the Constitution under which we have prospered, and which, God Almighty grant, we are not going to let fall to pieces; and although with relative population, wealth, and resources, for more than sixty years past regularly declining, such has been their stuff of character, that they have always continued to be, and yet are, the leading State. While so many others have, from time to time, played the fool, Virginia never has; and in the late affair of that miserable, but veritable exponent of extreme fanaticism—Mr. John Brown—their conduct was perfect; it could not have been better; and their moderation was such, that anybody who will examine the proceedings of the Virginia Legislature when, after all was over, they were reviewing the subject of that detestable conspiracy, will say, I think, that if they erred at all, it was in not going far enough in a just indignation.

Gentlemen, I propose to you, not three cheers for the Union, for they have become a little trite, and often are a little hollow, but a thousand cheers for all true hearts, wherever they be, whether in Pennsylvania, or Virginia, who, not telling us of their *love* for the

Union, will stand up and answer Hamlet's question: "What wilt thou DO for her?"

A CONVENTION OF THE PEOPLE.

Meeting of the Democratic Association of the Fifteenth Ward, Philadelphia, April 23, 1863.

FELLOW-CITIZENS: The Democratic party is reproached by the Republicans with not having a policy—with being a mere opposition, and I am about to endeavor to show that, in a Democratic suggestion which has been frequently made, there is a policy which is a specific,—a comprehensive, and healing one, so far as any medicine can provide for so vast a malady as ours has become, under the influences which now, for more than two years, have been operating upon it. What I propose to show is, that at a national juncture like the present, the people must be called in—we must have a convention. We are in the midst not only of war, but the worst of wars, a civil war, and the conflict threatens to change our institutions. It is a war between two geographical sections, in which one of the questions is the Union; and should the war end in a dissolution of it, our Federal institutions all go by the board. Nothing would be left but the States—thirty-four distinct, disjointed States; for if you divide the country, you cancel the Federal compact on which the Union depends, and its institutions fall with it. The Administration party charge the Democratic party with what they call Southern sympathy, and favoring the cause of those who have seceded from the Union. The Democratic party charge, not the mass of the Republicans, but their leaders, with a purpose to let the South go as a part of the country irreconcilable with the Abolitionists, and to use their armed force to hold down the North while they establish a new government. Whichever of these charges be false, and whichever the true one, the opposing parties agree in this, that the country is in confusion, and a separation of the States to be apprehended. Once let it come, and you have, whether the catastrophe is brought about by the Republicans or the Democrats, to set up a new establishment altogether. You have no longer a Constitution of the United States, a constitutional President, a constitutional Congress, or a constitutional Judiciary, until the States give to some like engines of rule their constitutional sanction. According to the Constitution your army is disbanded, your navy broken up, your treasury can collect no money, your nationality is at an end, your flag ceases to float, for the nation which hoisted it no longer exists. It is a position which has not yet been denied, that if the States should be separated by this war into two Confederacies, the

whole Union is gone, and we go back again to where we were before the Constitution was framed. We should be Pennsylvania merely—a foreign State to the other thirty-three.

This is a consummation which the masses of no party can desire. Look out upon the swarming population of this town, and your good sense will tell you that when you take them by the thousands, Democrats and Republicans alike can have no other wish than the prosperity of the country. The prosperity of the country is their prosperity.

I wish to do no injustice to the leaders more than to the rank and file of the party we are contending with, and I will support by their own authority the assertion that the Administration mean to make root and branch work. I give you a few words from a speech delivered on the 4th of this month by Mr. Stevens, on his return home, to his constituents at Lancaster. They coincide, in the main, with what we have, from day to day, from the Administration at Washington, and from their presses all over the country :

“According to my poor judgment, the Government must steel itself with sterner resolves, and prepare, if need be, for a revolution. First, universal emancipation must be proclaimed as a military necessity, with compensation to the few loyal slaveholders. * * *

“But even that great step alone will not be sufficient. As we conquer the enemy’s country, we must hold it, or the moment our troops are withdrawn, the rebels take possession of their old homes and renew hostilities. Let a military tribunal be created to follow the army; and as we conquer their territory sell to the highest bidder the lands of every rebel to military occupants, who, with arms in their hands, shall take resident possession by themselves or their tenants, and be ready to defend it against all comers. Take for example the State of Virginia. From the Rappahannock westward and northward (a vast territory), it is in our possession. Sell every acre of it belonging to traitors, to bold and loyal settlers.

“Let the same course be pursued in Kentucky, Tennessee, Missouri, Maryland, so far as rebels are concerned, and those States, having expelled the enemy and filled them with loyal men, would soon be able to defend themselves without foreign aid. So in every State to the Gulf of Mexico.

“The Roman Commonwealth, when she conquered a dangerous nation, expelled the inhabitants and planted it with her own citizens. There is no reason why we should not do the same.”

Here then you have the object of the men in power. It is to alter the face of the land; for I need not tell you that the South cannot be treated as it is proposed to treat them without changing our political institutions at the North from top to bottom. They not only must dissolve the Union, but to be able to hold up the system which they put in its place, they must take away our liberties. But leave it out, if you please, that our liberties are at stake. Agree that it is not so.

Suppose I am overstating the case—that we are not struggling for

the liberty of the citizen—that it is all a mistake to think so. Stop, if you choose, two steps short of that, and believe not only that our liberty is not in danger, and that our institutions are not to be ruined, but that we are altering our institutions for the better. Can the Administration do that?

They might give us better ones—a better Government, a stronger Government, grander establishments, more power, more army, more navy, more debt—but, after this was all done, and well done, it would be mere usurpation—for only the people themselves can alter organic laws. If the question concerned revenue or internal improvements—if it were a tariff, or a point of domestic or foreign policy, it would be settled for us by the President and Congress; and if we were not content with their decision, we would appeal to the polls at the next election, and reverse them, by electing a new President and a different Congress. But when it comes to breaking up old institutions and forming new ones, tell me what the Administration has to do with that. The ordinary machinery of Government has no such function; at such stages of the tide the people pilot themselves.

Fellow-citizens: If I mistake not, a Convention, the call for a Convention would be a rallying-point, when once fairly before the country, which would make nearly all the votes Democratic—one to which every lover of his country might betake himself, which would deprive the Abolitionists of the one and only advantage they have of us. When, in the midst of the storm which howls around us, they say, "You do not support the Administration, what do you mean to do?" if there be a plain, simple, tangible answer to give them, it ought to be given; and I believe there is, and that it lies in a Convention of the people. It brings the case to its true proportions—it makes the question between the greater and the lesser power—between legitimate and illegitimate—between the people themselves and Mr. Abraham Lincoln. It offers the remedy, if remedy there be, for in a Convention we put forth our whole strength—the strength of the people.

Gentlemen, we live under two Constitutions—that of the United States and that of Pennsylvania; let me show you how they came about, and then you have the evidence before you of what Conventions of the people can do. The Republican majority of a Senate Committee at Harrisburg, have lately reported to that body against a Convention. They say that since the secession of the Southern States a Convention is not attainable in the manner pointed out in our existing institutions, and would not be lawful; but I will show you that in 1787 the Constitution of the United States was brought about, not in the manner pointed out by existing institutions. It is now said that eleven

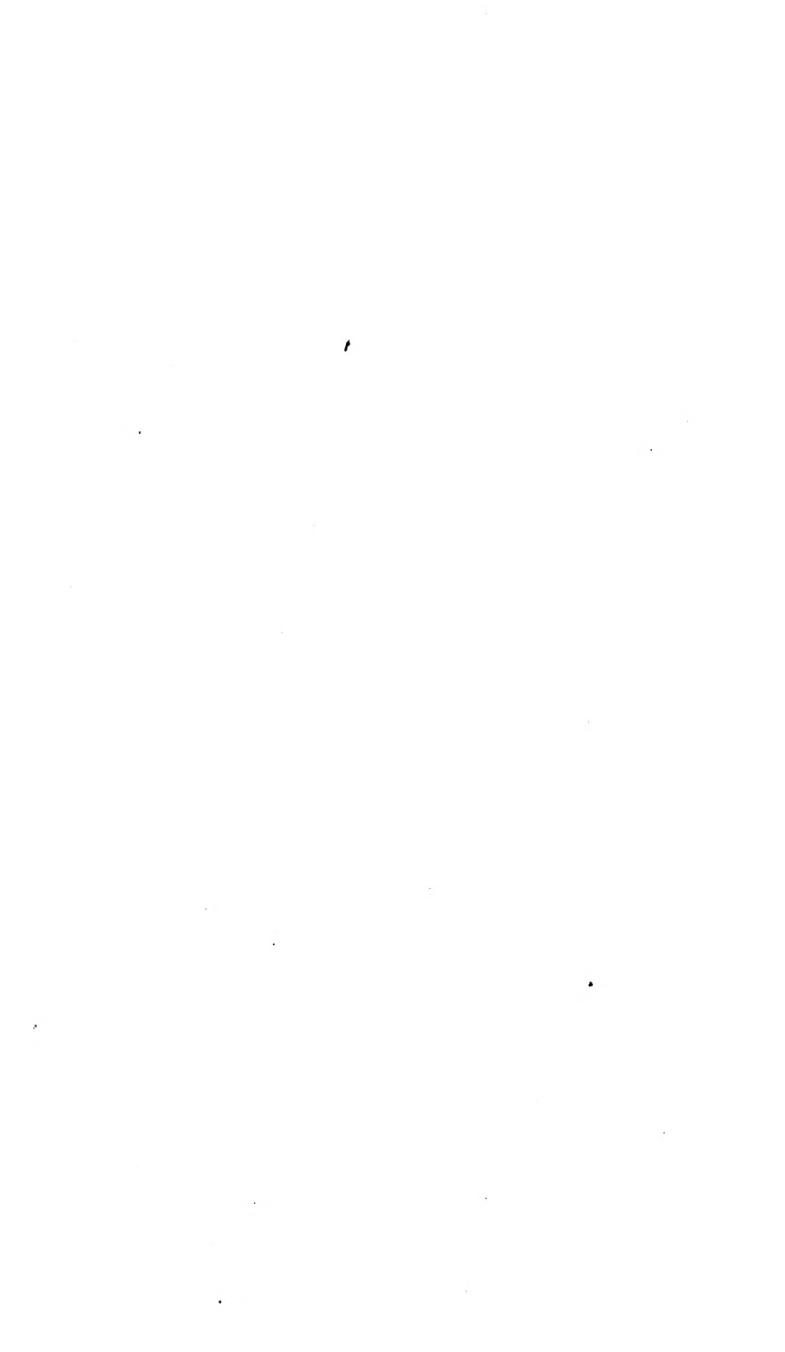
States of the thirty-four having declared themselves out of the Union, it is not possible to get three-fourths of thirty-four to ratify changes of our system necessary to the reconstruction of the Union. These may be obstacles, but you will see how more serious obstacles were dealt with by the patriots of 1787.

You all know that the first Constitution of the United States was called Articles of Confederation, and that it was superseded by the present Constitution, framed by a Convention which sat in this city from May to September, 1787. By the thirteenth of these Articles, it was provided that "the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State."

This Constitution, which was just as binding as the present one, and had occupied its framers much more time in the making, you see, was declared to be perpetual, and not amendable unless the amendments were agreed to in a Congress, and afterwards sanctioned by every State. When the war of the Revolution was over, it was found that to this Constitution there lay this insuperable objection, that the hands of the National Government reached only the States, and did not reach the people of the States. They dealt with Pennsylvania or Virginia, not with the people of those Commonwealths. If they wanted, for example, money, the sum for which we were assessed was asked for of the State authorities. The United States Government could not collect it for themselves. Congress proposed to the States amendments, by which they should be invested with power to levy money—only certain amounts for certain designated purposes, and none other. The States would not consent. A government without power to raise money, you know, cannot go on; and without detaining you with the detail of their difficulties, let me say in a word, that such was the state of public confusion at this time, that in England they looked—and with a degree of confident hope—to see us return to our allegiance to the British Crown—to our *loyalty*. But the Americans of that day believed not in loyalty—they were of the *disloyal* leagug, and what was the measure to which they resorted to block the loyal game? What was the measure for restoring their tottering fortunes? Was it executive power? Was it legislative? A dictatorship? A proclamation? Suspension of the *habeas corpus*? Emancipation and confiscation? Not at all. It was a Convention of the people! The difference between 1787 and 1863 is just that. In 1787 the States defied the central government—a dissolution of the Union was at hand—and they called a Convention.

In 1863 the central government defies the States, and a dissolution of the Union is at hand. But they say, Oh! never mind that; we want no conventions; executive power is good enough for us! At the crisis of 1787, the Washingtons, Franklins, and Hamiltons turned to the might and wisdom of the people, and there looked for succor. The Loyal Leagues of 1863 look neither to the right nor left; they leave it all to Mr. Lincoln!

Well, the Convention met. It sat in this city, and I want you to examine their work. I have shown you the article by which the Confederacy was declared perpetual, and the Constitution not to be changed without the consent of every State. It required the consent of every State to break up the Articles of Confederation, or even to amend them in the smallest particular; but the Convention once assembled was the people—the people in council—the people who had made the Confederation—and they determined that whatever was required for the general good, that they could do. The final difficulty then, as now, lay in New England. It was then confined to the little State of Rhode Island. Under the old Union each State governed its own custom-house, and made its own tariffs; and little Rhode Island, which has hardly any territory to plough or pasture, has two fine seaports. The consequence was that, through duties on her imports, which were infinitely beyond her own consumption, she could tax, and did tax, the whole country; the consumer, as you are aware, paying eventually always the custom-house duty. Of the foreign merchandise consumed in the United States, all which came through Rhode Island, and that was no small portion of it, paid a tax to the government of that Republic. Rhode Island taxed the Union. Rhode Island, therefore, not only refused to agree to amendments by which Congress could lay duties on her imports, but when the Convention met they would have nothing to do with it; they refused to send delegates to it—to an assembly which was destined to diminish their revenue. And they had a perfect right to refuse; it was Constitutional and lawful to refuse; whether it was patriotic might be another thing. The Convention sat—every State represented but Rhode Island—and on the 17th of September, 1787, adjourned, after drafting a Constitution, and recommending its adoption by the States. But how did they treat the clause of the old Constitution, by which to change it the unanimous vote of all the States was required? They said: “The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States, so ratifying the same.” Thus spoke the Convention of the people; and you see that if the will of nine States superseded the old Constitution, the other four of the thirteen were, to



use a phrase which has become proverbial, and therefore respectable, *left out in the cold!* Such, these men thought, was the virtue and power of a convention. The people could do lawfully by inherent right what Mr. Lincoln does unlawfully, they could fall back on the rule of necessity—the law of self-preservation, not *military* necessity, but the doctrine which no free citizen can deny, or even blink, that the safety of the Republic is in the keeping of the people.

What they did differs from Mr. Lincoln's doing the same thing as the execution of a criminal by due process of justice differs from putting the man to death by lynch law—one is murder, the other is not. One is the right, the other none at all. Read the names signed to this paper which gave effect to the will of the country, beginning with George Washington, and tell me then that a convention has not authority for any emergency, and cannot encounter and overcome any obstacles. Let us go on—here was a new Constitution to take the place of the old when ratified by nine States. Eleven ratified—the twelfth North Carolina, refused, the vote of their Convention being against it; and Rhode Island, whose custom-house advantages I have explained to you, making one hundred and forty per cent. profit on her commercial capital through the misfortunes of the country—as now, we learn by the newspapers, she and her New England sisters make the one hundred and forty per cent. on their manufacturing capital, through the misfortunes of the country, would not so much as call a convention to think of coming into the new Union—"to form a more perfect Union" was not to be thought of for a moment.

Well, the country had said that Conventions could do any thing, and on the 4th of March, 1789, a government was organized, with Washington at the head of it. Congress began to pass laws, and North Carolina yielded and became part of the Union. It only remained now to conquer Rhode Island, and how do you suppose that was effected? How do you think they dealt with little *hundred and forty per cent.*? By blockading her ports, and crying on to Richmond, you will tell me. Not at all, gentlemen. Under date of the 19th May, 1790, you will find on the Journals of the House of Representatives, these words:

"A message from the Senate informed the House that they have passed a bill to prevent bringing goods, wares, and merchandise from the State of Rhode Island and Providence Plantations into the United States, and to authorize a demand of money from the said State, to which they desire the concurrence of this House."

This, you perceive, was a bill to prevent the gallant little State from taxing the other twelve—to declare her a foreign country—and it brought forth fruit, for on the 1st of June, only eleven days after,

Washington, by message to both Houses, made known the ratification and adoption of the Constitution of the United States by the State of Rhode Island and Providence Plantations. Thus, gentlemen, was formed your Union. A Convention did it; a Convention compelled it. Here was a vigorous prosecution of the will of the people. I tell you, fellow-citizens, Washington, had he been at the head of the old Confederacy, commanding a large army, with unlimited power, and the Abolitionists behind to advise him, could no more have made the Union than Mr. Lincoln can break it. No man, no government could have done it:—the people alone were capable of it; they may be wise or foolish; I do not enter upon that question, but the power lies there—it is in them and nowhere else.

I may be a very insignificant person, but to control and regulate that which is my own, I am better than the best of you.

The difference between the power of the people, and the power of Mr. Lincoln, is, that the compulsion of the people is legitimate compulsion; the other compulsion is usurpation.

A Convention may do by the country as they will, but Mr. Lincoln may not. "All power is inherent in the people." It is not inherent in the President, or in the President and both Houses of Congress. They cannot change our institutions, introduce a military government, abolish slavery, do away State Rights, reconstruct the Union. The people alone can do such things. And here, gentlemen, let me give you a piece of advice; the next time you are asked why you do not support the Government, tell your Republican friend that you do support it, and mean to continue to support it, but not in measures which can be resorted to only by the people when they meet in Convention.

Thus operated in the last century the irresistible will of the people; they forced, or coaxed—call it what you please—they brought about the Constitution of the United States. But, perhaps the Abolitionists will tell us the Union always was a covenant with a place which they tell us a great deal about, but I will not venture to name; that slavery was too powerful in 1787 to make any thing done at that time a safe precedent. Washington had a hand in it; he was nothing but a Virginian; he was an aristocrat—a dealer in human flesh. Very well, then, let us see how you came by your own Constitution here in Pennsylvania, where slavery never was uppermost. In 1776 we made our first Constitution, and probably not an altogether bad one, for at the head of the Convention which framed it, was Dr. Franklin, who besides being a genius of a very high order, a philosopher, a discoverer, a diplomatist, was always a Democrat. But this Constitution had several



peculiarities, as we should now regard them; among the rest, the legislative body consisted of one house and not two, and there was a council of Censors, whose office somewhat resembled that of the Roman Censors, and among their functions was that of observing the working of the Constitution and calling conventions, should they be of opinion that it needed change. The provision was express that amendments could be reached only through the Censors. In 1784, the people of Pennsylvania having become discontented with the Constitution of 1776, and the question of altering it having been much agitated, this Council, after considering and deliberating upon it, determined not to call a convention, and published an address to the State, setting forth their reasons.

But the people did not agree with the Censors, and elected to the Legislature Representatives who passed a resolution that, "alterations and amendments of the Constitution" were required, and that the people could "not be limited to any certain rule or mode" of making alterations, "but may make choice of such method as to them may appear best adapted to the end proposed." They accordingly passed a bill, under which were elected members to a convention, and when that convention met they cancelled the Constitution, and gave us a new one, that which ever since we have lived under, though it was somewhat amended in 1837. Here is history again. You cannot, as Mr. Lincoln tells us, blot out history, and it still teaches the lesson of the power of the people. I asked you, if you doubted the political right of reaching the Constitution of the United States in 1787, by breaking down the provisions of the old one, to read the names signed to the draught, and I would ask you now to observe the signers of our Constitution of 1790. There sat in it not only Governor Mifflin, Governor McKean, Governor Snyder, Governor Hiester, Mr. James Ross, Mr. Gallatin, and other distinguished and conservative citizens, but you will find there for the first time on the rolls of fame, a name destined to be ever illustrious, that of Abraham Lincoln. The Lincoln of 1790 must have been a Democrat, for he represented the county of Berks.

Let us hope that future ages will not confound a citizen, who lent his aid to build a State, with the man whose effort is to pull one down!

I have shown you that you owe the Union, and your existing State institutions, as practical facts, to your ancestors acting on the rule that the power to do any thing lay in the hands of the people. I desire now to bring doctrine to the support of facts. You have seen the concrete; look at the abstract. Look at what wise men said; read

their principles as they wrote them out for their contemporaries and for posterity. On the 24th of March, 1789, the Legislature of Pennsylvania, in the course of their proceedings, preliminary to calling the Convention of 1790, came to a resolution, in which they laid it down, that "the community hath an indubitable, inalienable, and indefeasible right to reform, alter, and abolish government, in such manner as shall be by that community judged most conducive to the public weal," which passed by a vote of 47 yeas, against 17 nays. Among the yeas are the names of Mr. William Lewis, the eminent lawyer of this city, a decided Federalist, and of Mr. George Clymer, the ancestor of the present distinguished Senator from Berks, a man of the highest consideration. These words were adopted from the Bill of Rights of the Constitution of '76, framed, as I have said, by the Convention over which Dr. Franklin presided. Again, on the 22d of February, 1837, the Amendments of the Constitution of 1790 were signed in this city by a Convention, composed a majority of them of Whigs, and over which presided the late Mr. John Sergeant, a man whom many of you knew personally, whose patriotism was earnest—that is true—but controlled by his learning, his integrity, his ability, his unblemished honor, who never, in his long and useful life, put his name to extreme language or empty words, or words which he had not weighed.

I forbear to quote other names to the same paper, names of distinguished citizens yet living, who are now devoted, and I doubt not conscientious adherents of our present rulers, both at Washington and Harrisburg. Listen to what these persons said—to what every member of the Convention said (Mr. Stevens alone excepted), and signed their names to, in the year 1837, at no period of public excitement, not at a time when there could be the smallest excuse for taking doubtful ground:

"All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their Government, in such manner as they may think proper." *

Observe, I do not quote the Pennsylvania Declaration of 1776, or the Declaration of Independence of the United States, for this sort of language. Those were State papers, which made a revolution, and of them it might be said—yes, that is all very well, but it is the revolutionary right of which they speak—the right of the people to rise and redress intolerable wrong.

I give you the judgment of statesmen quietly proceeding to a political task in a time of profound peace, and what they said in 1837 is

what Washington did in 1787, and what we both said and did in 1790. But to go on. This ultimate right of the people is and has been, (especially when used for the public safety on great occasions), for two hundred years, ascertained and fixed doctrine in parts even of the Old World. Two centuries ago, when General Monk arrived with his forces at London, in February, 1660, England was at his feet by *military necessity*. He could have brought about all he wanted, and restored the monarchy by an order of the day, but what did he do? He asked for a Convention. He saw, at that early period, that the people alone could alter the institutions of the land; he was a quiet, solid man, and wished to see his work properly done. When twenty-eight years afterwards, in the same country, in 1688, the king threatened their rights, what did they do? They called another Convention, and settled their liberties on a basis which has lasted to the present time. Even in France, in 1789, under the old monarchy, which was absolute by the laws of the kingdom, the perplexed monarch called for the States-General. The King, who reigned by the grace of God, had not become infected among the fountains of Versailles, with the disease which makes his successor write himself Emperor, by the grace of God, *and the will of the French people*; but in the royal ignorance, which then prevailed, it was thought there was a magic in this new power—the people—from which they expected some relief. Fellow-citizens, we know—the last two years have taught us that—that the people are no magicians at all; that our Democratic stuff is sometimes no better than the “stuff that dreams are made of;” but among the lessons of our sad experience we have not, thank God, learned—though there are desperate efforts to teach us—that the people—weak, gullible, and human as they are—are not a little more powerful and a little more wise than those who would set themselves up for their masters and preceptors. Fellow-citizens, whence came power? From the people; they created the Constitution—the Constitution did not create them. Where, then, is the power not found in the Constitution; that residuum of power which is needed at a national crisis, for national salvation? Where should it be, but in the people? It is a logical deduction from the fact of our living under limited governments, that this final conservative residuum of power is in the people. The most hide-bound people in the world are the English; but what do we see happen every four or five years, in that country, where there is supposed to be *no* residuum of power—where Parliament is omnipotent, and has every drop and every inch of it? Do we not see an appeal from King, Lords, and Commons, to the polls? Does not the minister, when the road becomes rough, dissolve the Parliament, and appeal to the people? In as small an

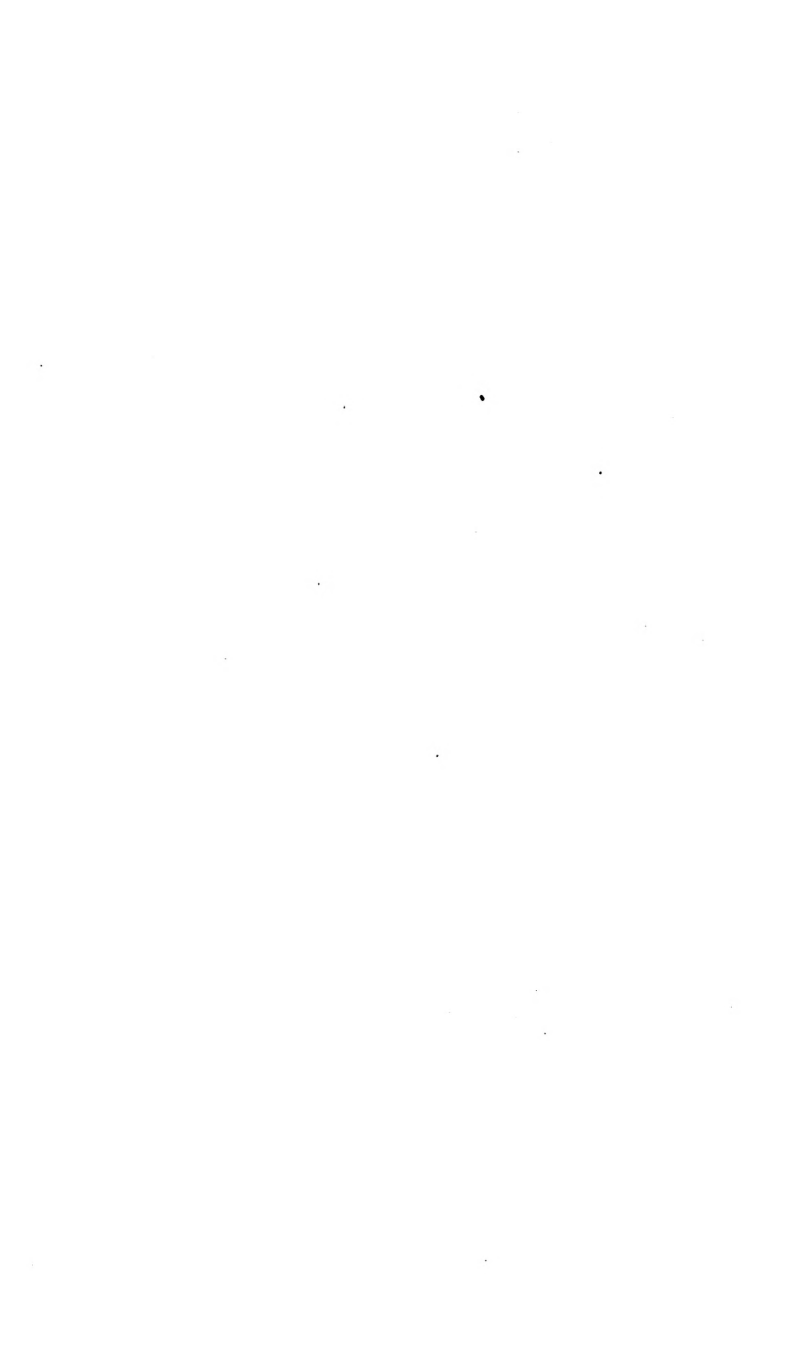
affair as their late Chinese war, when they come to a sticking-place, there is a dissolution of Parliament, and a general election. In a great crisis, as that of the Reform question, in 1832, they relieve themselves by leaving it to the people.

Gentlemen, the most alarming symptom of our case, the worst development of the last two years, is the difficulty of bringing the voice of the people to bear. Everybody knew that bad men might get into power; but nobody knew that in these United States of ours, when they had the helm in their hands, they could rush the ship onwards, utterly regardless of the people. Did not both sides agree that the last fall elections would settle everything? Who would have thought they would settle nothing? Who would have believed that the authorities of the United States, after the people had declared everywhere against them, would have treated the elections, as a distinguished Republican once said, as if they had not taken place?

It is no doubt true, as rumor gave it to us at the time, that when the result of those elections was known at Washington, Mr. Lincoln's Government at first meant to yield to the people, and that to brazen it out was second thoughts—the wild and extravagant second thought of desperate gamblers. If we are to be as helpless for the next two years as we have been for the last two; if the people are so unwieldy a body that they cannot help themselves, free government is a failure. What is everybody's business is nobody's business—that is a proverb—and when the Constitution is coming to mischief, to prevent it is nobody's business until there is a convention. What the Administration means is a recognition of the Southern Confederacy as soon as the country can be brought to submit to it. It is Mr. Seward's dream and our nightmare. They will force it down your throats, if you do not rouse yourselves.

Now, what can the Democratic party do better than write on their colors, "*A Convention of the People!*" Then when our Republican friends say to us, what do you want? we will answer them, we want to bring to bear on this tremendous question which now shakes the earth on which we stand, the only power which is competent to cope with it.

Your Administration is a small affair; it cannot alter, it cannot deal with change (I don't mean *greenbacks*, but eclipses—that sort of political change which affrights men, and makes nations "yawn at alteration"). Mr. Lincoln was put where he is to administer—not to add, alter, and renew. We want, when a great lift is to be made, a great lever to make it. The patient is very ill; we want the best physician, the best nurse, the most powerful medicine. The tempest is high, the ship is on the rocks; we need an interposing Deity that can still the



waves, and cause the winds to cease. Many a well-meaning, harmless Republican is voting for Mr. Lincoln because he thinks there is nothing else to do. If he ask you exactly what it is your Convention, with all its power, could do for us, tell him it can come to a settlement with the South, and restore the Union, which Mr. Lincoln could not do if he would, and his masters would not let him do if he could. Did you ever hear—did you ever read—if your reading has been limited make it extensive, and then tell me whether you have found in history the solitary, single instance of a quarrel between sister States in which the cry was unconditional submission—no compromise with traitors? Why, gentlemen, King George III., the most pig-headed and perverse gentleman of his day, when we rebelled, made us offer after offer of terms, and to back one of them, sent over to this city of Philadelphia, where he lived for some time, the Earl of Carlisle and two other commissioners, to treat with us of peace and reconciliation.

You have seen in all the newspapers that an offer was received at Washington and rejected, in December last, from the South to the North, to return to the Union. That there is a degree of exaggeration in this may be imagined; but until the Government at Washington condescend to inform us what the whole truth is, we may reasonably suppose that from a Southern quarter, which was at least respectable, such an overture was made. And why not?

Fellow-citizens, if these Southern men have proved themselves, since the rupture took place, to have a thousand times the brains of Mr. Lincoln and his advisers—and that nobody can doubt—how can anybody doubt that their good sense will point them to reconciliation and reconstruction? Let us try them! At least, don't tell me that a sensible man will give you a fool's answer before you have tried him.

To believe that the Southern masses would refuse to reconstruct this Union when the Democratic party made the offer, is to believe they have lost their senses.

Fellow-citizens, the main difficulty is with the North, not the South; with the party who plotted to dissolve the Union long before South Carolina did; the party who to-day would stand you and me shoulder to shoulder with emancipated negroes in the ranks of war, to lay waste the South, and put the population to the sword without distinction of age or sex, rather than restore the Union; the party which, in the extremity of their hate and horror of a Union, of which the South is part, pours forth upon you, the friends and supporters of the Union, their daily floods of noisy vituperation.

We heed them not; let them howl on. What the Democratic party wants is, their Union and Constitution back again; that Union and

that Constitution which the leaders of these misled Republicans have, for years, been denouncing; that flag which the Democratic party carried to honor and renown, and which the Abolitionists did nothing but scoff at till it was unfurled against the South. Where was the opposition to the Democratic party—where was New England—when we displayed our banners against Great Britain? Why, fellow-citizens, if they could have had their way, there would have been no glory for that flag; it would have been a poor, sneaking, commercial bunting that never smelt gunpowder—a pitiful rag fit only to hoist over a cargo.

Fellow-citizens, I conclude as I began, by recommending that the Democratic party offer to this bleeding land, and to the Republicans, who go to bed to be physicked by those fiery quacks, the Abolitionists, the consoling hope—the tangible, the true, the broad, deep, practical, lawful, and legitimate remedy, to be found in the might and right of the people, manifesting itself in conventions. When we are asked what we would have, let us say an appeal to the people. When we are asked the time when a cure can take place, ask the questioner how long it will be before Mr. Lincoln will have brought about one.

PARTY CONSERVATISM.

Meeting of the Democratic Club, Manayunk, Philadelphia, June 10, 1863.

FELLOW-CITIZENS: It is a question well worth any man's curiosity, whether the party who follow the persons who have in their keeping the President of the United States appreciate the perils of his Administration. In a country like ours, where not a few fortunate individuals, but the mass of the people are educated, comfortable, and happy, a strong conservative feeling pervades society. Men, with us, are to be found only here and there, at rare intervals, who have any thing to gain by public confusion; and the protection of person and property by the law, which in some parts of the world is a luxury, was, until two years ago, all over the United States, held by the humblest citizen as one of the commonest of his rights and a necessity of his life. Now, where every thing belongs to the people, and is dear to the people, where they want things preserved and not destroyed, what are we to think of such a Government as that of Mr. Lincoln and such a party as that which sustains him?

Fellow-citizens: The Republicans, as led by the Abolitionists, have not about them an iota of conservatism; they are essentially a

revolutionary party, and the Democrats are the conservatives of the United States. If you will look at the foreign press you will see yourselves constantly so designated. I have not seen the adherents of Mr. Lincoln there called Jacobins, but you will see them so described and treated; and to the Democrats the one plain, and to us the entirely new name, is applied—they call us conservatives. This is the judgment of the world.

Gentlemen, the Democratic party, in a certain sense, has always been conservative; it has been the party of the country; the party which not only united itself frankly and heartily with the free and open institutions of the country, but which, professing full faith in liberal principles, almost whenever the question came up of relying on them, has voted in the affirmative. It was in this way the party to which, naturally, so to speak, the country belonged, and therefore the party for taking good care of it. In this sense, when they stood opposed to the old Federalists, and then to their successors, the Whigs, they might have styled themselves conservative; but understood in any other manner, and looking to their measures and party creeds, the Federal and Whig parties were more conservative than we were. Mr. Hamilton was more conservative than Mr. Jefferson. How, then, have we changed places? Gentlemen, it is plain enough we have not changed at all; we are where we always were, but the party opposed to us have got themselves a new master, and he has made a new man of them. The old Federal party was a party of principles, and they adhered to them. The Whigs dealt more in expedients, and, for the sake of success, sometimes coalesced with political fragments less worthy than themselves; but the distinguished men who led their fortunes, though not very successful in attaining power, never could be tempted to sacrifice honor in the pursuit of it. But in the summer of 1852 died their great leader, Mr. Clay, and in October, of the same year, Mr. Webster followed him to the grave, and then the Abolition element of the opposition to the Democratic party—an element “as rash as fire”—which, though often struggling to rise to the top, had been kept down by those statesmen, came directly forward—it came into play under the auspices of Mr. Seward, not a statesman, but undeniably a politician. Incessant anti-slavery agitation, and the repeal of the Missouri Compromise, four years after Mr. Clay and Mr. Webster had left the stage, strengthened them prodigiously. So great was their accession of force that in the Congress of 1856–58, an avowed Abolitionist, Mr. Banks, of Massachusetts, was selected as their candidate for Speaker of the House, and, after balloting from the 3d of December, 1856, to the 2d of February, 1857—during all which time the House remained unorganized—Mr.

Banks at last was carried in triumph to the chair, and Abolitionism sat at the head of the representatives of the people. From that hour of their success, the opposition to the Democratic party has been controlled by Abolitionism. True it is that a large and respectable portion of the old Whigs supported, in 1856, Mr. Fillmore, and, in 1860, Mr. Bell as their candidates for the Presidency, but much of that opposition became Abolitionized. The Abolitionists it was who showed them the way to power. It lay through the negro question, and they followed it—they have followed it, gentlemen, across the body of the Constitution—over the ruins of the Union!

At the succeeding Presidential election they ran an Abolition candidate in Mr. Frémont, and at the election which followed, that of 1860, they elected Mr. Lincoln. Both were candidates selected on what may be called revolutionary principles—the principle which teaches to take small men to bring about great objects, when the objects are revolutionary—when they are objects at which statesmen would start back.

If the Abolitionists had been less determined on driving home their doctrines—if I am so to denominate their schemes of destruction—and had taken Mr. Seward instead of Mr. Lincoln, the Union would have been saved, for Mr. Seward had strength enough to resist an onslaught which has dragged Mr. Lincoln to his ruin. He would have saved himself from his friends. He would not only have preferred, as doubtless Mr. Lincoln did, a whole land to a divided one, but he would have had sense enough to keep it whole. But Mr. Lincoln was their man. Now what was the position, when they first came in, of the party which had taken him for their chief? The leaders had in him, whether honest or dishonest, a question which posterity may settle for us, a man to do their bidding. But of the voters of the United States who had made him President, these Abolition leaders, though the influencing characters, were a very small fraction indeed; and the bidding of party leaders, however absolute their will, must wait for favoring circumstances and be regulated by events. Now look at the events, and see how Abolitionism turned, with the aid of them, the Conservative flank of the Republican masses. As Mr. Lincoln was taking possession of the reins of Government, State after State was leaving the Union. Secession was taking its stand. Abolitionism stood where it always stood, for those men, to do them justice, never flinch. The voice of their deluded Republican followers was for peace at any price—for peace at any price, and for union if possible. None of them thought of a war for the Union, a war for the abolition of slavery, a war for the subjugation of the South, a war for national honor, or revolution for any purpose. The party attitude was tame, it was any thing but revo-

lutionary. Take Mr. Lincoln's Inaugural Address, delivered after six States—South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida—had passed their ordinances of secession and left us. In it you have the Republicans of the winter of 1860-1. What did Mr. Lincoln say their programme was? He had no purpose, he said, "directly or indirectly, to interfere with the institutions of slavery in the States where it exists;" he believed he had "no lawful right to do so." He would, he said, hold the Government property, he would collect custom-house duties, but use no force "beyond what was necessary to those objects; and in places where hostility to the United States" should be "so great and universal as wholly to prevent the accomplishment of them, they were to be left wholly unattempted," the right of the Government being rather foregone to enforce the exercise of "these offices" than accomplished or attempted by means which must be "irritating." The mails, he modestly added, were to be carried in the seceded States, if they would let Mr. Lincoln carry them; and, finally, his great and ruling desire was emphatically declared to be that the people everywhere should "have that sense of perfect security which is most favorable to calm thought and reflection." This was the programme; and do not forget that at this time all Federal property in those six States, excepting some three or four forts which were inaccessible, had been seized by violence, and was in as full possession of the seceding State authorities as ever it had been in that of the Federal authorities. In short, the Republican party and the Republican chief, profoundly alarmed at close sight of dangers, which, when more remote, they had defied and provoked, went beyond conservatism and sunk to the lowest point of meekness. But not so the Abolition leaders—they only bided their time, and soon it came. With the 12th of April came the attack on Fort Sumter. This gross and preposterous outrage, which did not change the case, changed the scene, transported the North beyond the point of patience, inflamed men of all parties, and passion ruled the hour. It raised a whirlwind; Abolitionism seized the critical moment and did not hesitate, jumped into the car, snatched the reins, and has ever since directed the storm. They instantly called Congress together, and asked through the message of the 4th July, 1861, of their poor, passive Mr. Lincoln, for "400,000 men, and 400,000,000 dollars," to begin their revolution, to make, as the message expressed it, "the contest a short and decisive one."

When the call was issued summoning Congress, which was the day after the reduction of Fort Sumter, one, and only one item more of Federal property had passed to the possession of the secessionists; excepting which, and excepting that instead of a dead calm there was a

high wind blowing, every thing was exactly as it had been at the delivery of the Inaugural Address. But the wind made the difference; it had brought Abolitionism to the helm, and there it is yet. It enabled them to begin their work in earnest—to gather the reward of thirty years' labor.

To make a weak man President, and gratify the passions and long-nursed vengeance of his managers, we have parted with more than half our territory and about a third of our population. It will take a century to recover back the character we have lost, and re-edify free institutions which we have seriously damaged all over the world. We have a conscription bill and an income tax; we have a debt, which will be paid as soon as men can be found who do not know gold dollars from paper ones. A California adventurer, tossed up into a commander-in-chief, threatens us with his heel; Mr. Secretary of State touches a bell on his right hand, and a citizen of Ohio goes to a fortress; on his left, and it is a citizen of New York; Government spies surround us on every side; our political system is tottering; the bonds of society are becoming every day looser; the torrent of a war, attended by carnage such as modern times have not witnessed, sweeps us every day further and further from the hope of reconstructing the Union, while there does not seem to be in any thing but reconstruction the reasonable prospect of an escape for the great Republic from the fate of her sisters of the South American continent.

It is to-day the simple truth, that the Republican party, and with them no small portion of the old Whigs, are hurried along by men whom, as lately as in the latter part of the time of Mr. Clay and Mr. Webster, they stigmatized and denounced as unprincipled bigots, utterly unfit to be trusted with power. For those respectable gentlemen—I say nothing of their wild and reckless leaders—there can be but one apology. If they believe, if the events of the last twenty years—if having seen this people turn to folly, and become what they are to-day, has brought conviction to their minds, that our system of broad and open freedom is a failure—that we must retrace our steps, and by means, good or ill, change it from top to bottom for stronger institutions, with military or monarchical elements—if that is what they mean, then I understand them. But if they are believers in our capacity for self-government, their weakness in yielding to the revolutionary courses of their anti-slavery masters is a fault and a crime for which there is no excuse.

Gentlemen, you may tell your Republican friends we are paying the penalty of revolution when we have no more occasion for a revolution than we have for an earthquake. This revolution of 1860 is the voluntary work of men's hands—it was brought on by a handful of men.



The out-and-out Abolitionists will tell you so, they have told you so, a hundred times. They put in a Government with the task of tearing every thing to pieces, to build up again, we know not what, or what is at best but an unsubstantial dream, the fancied equality of races between which God has made differences which defy the power of man. We have made a revolution, and rebelled, not against tyranny and taxes, but against the laws of Heaven, and the persons who made us rebels have been, as their history shows—written by themselves—in rebellion against man and God ever since Puritanism took its rise, now more than two hundred years ago. These are the people, who by their untiring industry, by their unflinching zeal, by their talents, their learning, their coalitions, their agitations, their work above the ground and under, have at last got possession of the Government of the United States—whose plans are now developed—who have, since the 4th March, 1861, thrown away, one after another, every rag of moderation. Conservatism they denounce as a crime against the State. They give it the name of the highest crime; they call it treason. You and I are traitors; and the reason is, because we counsel moderation; because we advocate conciliation, compromise, and Union. Not to be a traitor, you must declare yourself for a Union of a conquered and ruined South, with a North to trample on it.

But, gentlemen, recollect there is no such thing as a revolution to order, a revolution at the order of this or that man, at the order of Mr Lincoln or Mr Seward, at the order of the Boston *Liberator*, or the Anti-Slavery Society, a revolution with which the heart of the country and the material interests of the people have nothing to do—have nothing in common. Revolution, to be useful and necessary, is a great effect, for which there must be a great corresponding cause. Its preparation is the work of ages. You remember the answer to the poor girl who asked relief at a door, which proved to be that of a Magdalen hospital. “*You must go and qualify yourself,*” said the porter, “*by prostitution. We do nothing for honest folks here.*” We must go and qualify ourselves for revolution by misery, by crimes, by a few centuries of oppression. Without the preparatory exercises, we only make ourselves ridiculous; we give birth to a race of pigmies. After we shall have been long enough under the harrow to acquire—what yet we have not an atom of—the energy of revolution—we shall begin to produce statesmen and generals.

Dire necessity, imminent peril, having to fight a country between two and three times stronger than they are, and incalculably richer, has set the other party to this revolution—the sluggish South—to producing, has brought them not only wise heads for council and skilful hands for

the field, but made their whole territory hum with mechanical industry; has given them for their own that commerce and those manufactures which, before Mr. Lincoln changed all that, they left to us, while we of the North, who began with "on to Richmond," and the impression that we had only to "crush them" and "wipe them out," that our task was the easiest and simplest that New England ever set to its disciples—we will begin to be great, according to the law of forces and rules of the economy of nations, after misery shall have driven us to it—when we shall have *reduced ourselves* to the condition which makes men desperate.

The Revolution of '76 came when events had ripened it; it came because the time had come when we would no longer remain at the apron-string; when we were of age and declared our majority. The revolution which followed it in France, in 1789, had its cause in a high-spirited people owning but a third of the land, and out of it paying all the taxes, while the priests and nobles who owned the other two-thirds paid no taxes at all, and ruled them with a heavy hand beside. But who laid a heavy hand on us, and what taxes did we pay till Mr. Lincoln's time? And as for revolution, which turns on the desire to part from the parent stem—to part from one another—to break in two—certainly the South never wanted that, nor did we of the North, unless proselytes were made to it by Mr. Lincoln when he explained that *inclination* to the House of Representatives in 1848. Let me remind you of what he said. Here was his doctrine as reported in the debates of the day: "Any people, anywhere being *inclined*," said he, "and having the power, have the right to rise up and shake off the existing Government, and form a new one that suits them better. Nor is the right confined to cases, in which the whole people of an existing Government may choose to exercise it. Any portion of such people that can, may revolutionize and make their own, of so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority intermingled with or near about them who may oppose their movements." I say, gentlemen, unless this vile trash be political logic accepted at North or South, unless we were ripened for revolution by some people in the South being "*inclined*" to go, or by some people in the North being "*inclined*" to make the South go; unless that made the ripeness, there was no ripeness at all. But, no! gentlemen, the statesman of 1860 was a babe in 1848. He was not, as another great man said, *he* was not—"nursed and dandled into statesmanship;"—for a greater, a more fatal mistake, no people can make than, as he recommended in 1848, to jump into the gulf of revolution only because "portions of such people that can, may revolutionize!" It is exactly for the reason which, in 1848, Mr.

Lincoln thought a good one, that our revolution is a folly, an unmitigated and unqualified curse. We have made it, forsooth, not because the people needed it, and time and events demanded it, but because Mr. Garrison was inclined to it—Mr. Wendell Phillips was inclined to it—a few fanatics were “inclined” to it—a few politicians, who coveted power and the plunder of the treasury, were “inclined” to it, and in an evil hour succeeded in persuading the extreme North that being “inclined,” *a majority of a people may act on their inclinations and put down a minority, and make their own of their territory!*

A single word on a subject on which we hear much from the Republicans. There is a sign, they think, a sign at least of conservatism, which adorns their front, of which they are never done boasting. They say they have with them the *capital* of the country. Gentlemen, count the cultivated acres of Pennsylvania, and tell me how many of them you find in the hands of the Republicans. Are the farmers and landlords Abolitionists? Greenbacks—if you please—value which goes up and down with Mr. Chase’s thumb—credit—much of the brittle establishment called the funds, of which the larger portion is nothing but credit—no small part of such capital as that, I grant you, *supports the Government*. To be sure it does. The Government is its master. When the precious metals are no more, and the Government is in the field spending thousands of paper millions, such capital has but a small chance for its virtue and independence. It has a master, and must do as it is bid. Its conservatism and propriety are on a par with that of many of our Protestant clergy of the United States, who do as they are bid too, and adjust their degrees of offence against the doctrine and example of their Divine Master to the exigencies of their earthly master, the congregation. They may be right enough—and so may be the clergy—to look to their pockets. I do not stop to impeach them for it; all I say is, they are not to be counted as a conservative item in the great account which we are making up, and have soon to settle.

Fellow-citizens, credit and the funds are not conservative, they are only timid—they truckle to Mr. Lincoln, they eat humble-pie. If they had had funds at Rome, as they had not, those funds would not have sold, as you know land did, at a fair market price, when Hannibal lay before the town—they would have capitulated or run down to nothing. Gentlemen of capital, look out for your capital. Your time will go by. The sibyl will not always return to your door. The Government—the *Administration* we call it—which you subscribe for and support, is revolution, and nothing but the coming into power of the Democratic party can save you from the fifth act of a revolution. Look to that—there is the danger for your property—the danger of anarchy. If prop-

erty lays to its soul the unction that the worst which can come of all this is a strong Government to take care of it, it commits a fatal error. It will be many a generation before a strong Government is seen in North America, before this country submits to a master, before we can be satisfied we are not born to be free. What we shall come to, if this thing is pushed, is mob-rule, which will sack and destroy property. We may go to that point by the way of tyranny, but there will be a very short reign of it indeed, and the end, an end soon arrived at, will be universal confusion. It is a prodigious mistake to say that what the country has submitted to during the past two years proves their pusillanimity, proves they will yield their necks to the yoke, that they are ready to be slaves. Gentlemen, posterity will say of these events, now passing before your eyes, when they come to be reviewed, that they prove not the low but the high qualities of the people—that unlike the populations of Europe, who have no election day, who know no remedy for oppression but to rise in insurrection, we stood by the law; that, conscious we were free, we waited for the ballot-box; waited till we could come by power in the due course of organized policy. We have no starving population to make mobs; no men of broken fortunes to lead them, and nothing but some sudden, and not to be looked for, outbreak of popular resentment can bring us to resistance, until all hope is past of redress through the law; through the Constitution; through the regular and prescribed course of the institutions of the country. But when the day comes—if it be coming—when the Government in this North of ours attempts to set aside the ballot-box, and substitute for it their own arbitrary will, the day of revolution consummate has arrived. When the citizen finds his way to the polls obstructed by physical force, he will achieve his rights on the spot. Did he fail in that, he would be a slave forever, and deserve to be.

A word now, if I am not making too great a draft on your patience, on another point of conservatism—I mean the violent and unconservative manner in which the war of party, not usually a war to the knife—is carried on against us. The Abolition party hate slaveholders. It is their first commandment, but they are not face to face with them. The Democrats they meet in the market-place; we cross their paths, and infect their air, and indemnifying themselves for it as they do with indulgence in a fraternal hate and a daily increasing appetite for fraternal discord, they are paving the way for possibilities, which, being the minority, an ascertained minority at the polls—they had better avoid if they can. What have we done to incur this most unconservative dislike? More than half the country, too many millions of persons to be acting under delusion, backed by distinguished statesmen, and sup-

ported by the solemn judgments of courts of justice, insist that the Federal Administration has set aside the Constitution. That they think so, no man in his senses can doubt. Now, under these circumstances it is that the Democratic party seeks, in regular course of constitutional opposition, to put them out. We propose to vote them out. What else? Nothing! And I may add that our language, the language of our press—what is left of it—and of our speakers, in and out of Congress, is rarely immoderate. I ask the question whether the opposition to Mr. Buchanan, the opposition to Mr. Pierce, and so up the line of Presidents to Mr. Madison and Mr. Jefferson, was not more violent, more abusive, more unsparing, than our opposition to Mr. Lincoln? I believe no Republican will lay his hand on his heart and deny it. If this be so, then the supporters of the Administration must needs be, to the last degree, culpable in their mode of dealing with us.

The language that is applied to us, the threats which are uttered against us—if we can believe our eyes and ears, and trust them—the information, the authentic information, which reaches us from all sides, can be construed only into a purpose on the part of too many of the supporters of this Administration not to meet us fairly, party against party, not to outvote us, not to gain elections over us, not to deal with us in the fair course of political controversy, but to strike bodily terror in us, if they can, and if they cannot do that, to prevail against us by *physical force*.

Gentlemen, if I know any thing of the purposes and proposed movements of the Democratic party, what they most would avoid is personal conflict, what they most desire is to adhere to the organized action of their institutions. What they fear is the invasion of those institutions and the total destruction of their capacity for organized action by a resort to brute power. Now, this is a meeting in a ward, one of twenty-five wards, which, all put together, make but a single town; but I take the opportunity, from this humble stage of an obscure theatre, to bring it to the attention of the Republican party that, considering the relations between us, I mean considering that they are the *minority*, and we the *majority*, their course towards the Democratic party is perilous. If they not only think our principles as detestable as we think theirs, but if they mean to attempt to crush them out of us as they call it, they had better recollect who and what they are, and who and what we are. To affront those who are stronger than themselves is imprudent; but to insist on pressing the quarrel to extremes is dangerous. They had better pause—they had better, if need be, to gather wisdom, go back and study the fable that shows the difference between the *earthen pot* and the *iron one*.

In conclusion, let me say to you, fellow-citizens, follow out to the end your conservatism—let our antagonists ruin themselves, but not the country. They can violate the law, trample on the Constitution, but I think they cannot drive the people past their discretion, and I am sure they cannot prevent their changing their rulers at the ballot-box. The chances are against them, the chances are with the people. If we bear and forbear till the autumn, and then beat the administration at the polls—for a fair clear poll we will have at no matter what cost—the contest is over—we are safe—we begin a new day—not indeed with unclouded skies, on the contrary with the storm all around us; but wrapped in the mantle of our integrity, we shall weather it.

And should the day come which you and I are struggling to keep off; when all is confusion; when every thing is pulled to pieces, and those who now whoop on soldiers to do military execution on free speech and free men are flying from infuriated mobs; when they come to be the anvil instead of the hammer, and to be the anvil for their own hammers, for the mob that pursues them will be a Republican mob, a mob of their own victims, instead of seeing these poor men carried to the lantern or the block, give, I pray you, Mr. President and gentlemen, give as many of them as you can refuge in your cellars.

CONSCRIPTION.

Argument before the Judges of the Supreme Court of Pennsylvania, in the case of Kneedler et al. vs. Lane et al. Dec. 30, 1863.

I DESIRE first, with the permission of the Court, to say a word in addition to what my colleague has urged and backed with authorities which ought to be irresistible, touching the right of these defendants, whoever they may be, to come into Court and move to dissolve this injunction—a motion made under circumstances so extraordinary that it would be vain to look for precedents to justify it. It concerns not my clients alone, but the honor and dignity of the Court that this motion be denied a hearing. On the 23d of September last, the motion for an injunction—the injunction they now would dissolve—was argued before the five judges, the learned judge, before whom the motion was made, having requested and obtained the attendance of his four brethren to hear an application involving a great constitutional question. Notice of the day appointed by the Court for the argument was given to the counsel who seemed to represent the enrolling officers and the interests of the United States, who had called on us for a copy of our bill, and repeatedly communicated with us as representing the same



parties for whom now avowedly they appear, and for whom they have entered of record an appearance. When the 23d of September—the day fixed for the hearing—came, the Court was here, the counsel for the plaintiffs were here, but no counsel for the defendants.

After waiting some time, the learned gentlemen were sent for. The return of the messenger was that they were not in town. This was strange, considering that the judges had come together from different parts of the State at a season of vacation, expressly to hear this case and no other. But the interests involved were so important that even in the face of what appeared to be a slight, the argument was not suffered to proceed in the absence of the defendants' counsel until the very unusual recourse was had to affidavits. The argument then proceeded, the plaintiffs were heard, and the Court adjourned to consider the question. On the 9th of November it was decided during the session at Pittsburg, each of the five judges delivering a separate and elaborate opinion, and the order was for an injunction to restrain the draft in each of the cases, three of the learned judges holding the Conscription Act to be unconstitutional, and two not. On the seventeenth of this month of December, the same learned counsel, who was not in town to take part in the argument in September—and it is not pretended but that he meant to be absent, that he refused to take part in it—comes in and moves to dissolve the injunction. Here, then, was a motion to undo what had been so solemnly done, exactly one month and eight days before, supported by no affidavits, pretending to no new facts, no change of circumstances, and no reason whatever to this moment offered why the Court should take back what they had so lately and so deliberately adjudged. Why should these defendants be allowed such a liberty? They say a motion to dissolve is always in order. That is new to us. In England, and possibly in others of the States, injunctions are granted without hearing, without calling in the party to be enjoined, but with us that is not so. By the 53d rule "special injunctions shall be grantable only upon due notice to the other party by the Court in term, or by a Judge thereof in vacation, after a hearing which may be *ex parte* if the adverse party does not appear at the time and place ordered." Such being the practice, motions to dissolve injunctions are not more in order than motions to open judgments at common law. You can come in, but you must bring with you something to show that something has happened to induce the Court to pick out their own work; otherwise, there would be no end to experiments on their justice and trifling with their patience. I can make the motion, but can I have a second hearing? Can I have a special day assigned and the Court assembled to listen to me? Can I refuse to come in and present my argument at the

time fixed to hear it, and then, when the decision has gone against me, say, *I will be heard now?* Was such a thing ever done before? I most respectfully and most confidently submit that it has no example. I could imagine with a little stretch of imagination that in a matter so important to the whole community the Court would not let these interests suffer for contumacy of those who issued the order not to defend them in September—I say, who issued the order, for no imagination could be so lively as to suppose that counsel were not on that occasion ordered and directed to forbear to defend this case. If, therefore, in so grave a case those who committed so grave a mistake offered to repair it, I can understand how the Court should say, we will hear you, the public shall not suffer by your default.

But the way I should suppose to say that, is to say to them, file your answer to the Bill—do that to-day and your case will be entitled to a hearing to-morrow. All the defendants have to do, instead of flouting us with a motion to dissolve, is to come regularly forward, to have the case regularly heard—heard decently and in order. In a case not involving a single disputed fact, it is plain they obtain speedier justice if the object be to avoid delay, than they can have through this motion. They actually retard justice by the course they take. They can get by this course only an unction for their pride at the expense of the dignity of the Court. But have they done nothing to forfeit their right, if they ever had it?

They have, indeed; not only they refused to avail themselves of their opportunity last September, to show the constitutionality of this law—not only did they purposely and contemptuously reject it, but when the argument went on without them, and the case was decided against them, what did they do? Why, having despised to argue the question in September, and the injunctions being ordered in November, they go on in December and stick their bills all over town, and on the very Court-House walls, in pursuance of a law which the Court had just declared to be unconstitutional. They condemn the Court, they act in derision of it. These are the circumstances under which this argument is to go on. As you have said we must go on and argue both questions together, the question of order and the other, I thus offer my views on what we regard as the question which the Court have to decide before they can reach the merits, and coming to the main question I repeat the humble suggestion, that the course of the defendants, and of those under whose promptings they act, is an affront to the administration of justice, which it concerns the dignity of the Court, if not to rebuke, at least not to submit to.

But enough of this. Let me take up the merits, so soon to be re-

viewed, of the great question you have just decided. Upon it I shall endeavor to satisfy the Court of these positions: First. That the power given Congress "to raise and support armies," which is contended to be an unlimited power, is not so. That while these are general words, such as organic law by necessity deals in—for Constitutions are not like statutes, and cannot go into details—they convey by those general words a limited power; how limited I will show. Second. That the power to impose a military conscription, and impress the whole population for military service, like the right to take all their possessions, and transfer them to the public chest, is not properly a constitutional power at all, is not an engine of regular government, at least not in this country, but is that ultimate right which exists somewhere in every civilized community, to provide for its safety in time of extreme need, and that this power, which is the power of the *parens patrie*, with us resides not in the Federal Government, but in the States. That the exercise of it, therefore, by Congress is an usurpation, in other words, unconstitutional.

Before coming to the law of the case, I desire to say something on its facts. Not the facts set forth in the bill, but certain facts on which, as I understand it, the learned Judges, who composed the minority of the Court, at the former argument, laid great stress. I mean facts of history; the fact, whether in this country or in England, from which we derive so many of our ideas and institutions, there ever has been a military conscription, or any thing like it; whether, for this act of Congress, now on its trial, there are precedents in either country. Every country, which has lost its liberties, has seen them taken away by an army. They are either taken by the army, or being snatched by a tyrant in the midst of civil confusion, his army has enabled him to keep and hold them. It is not necessary he should be a Cæsar. He may be a blunderer and do it. Any government, with a Constitutional power of conscription, an unlimited right to raise armies by force, is on the road to tyranny, and the question what the precedents are, therefore, is an interesting one.

I do not mean the militia. Those are precedents of a kind of conscription, which I do not mean to quarrel with. That is not raising and supporting armies. The State power to call out the militia, and compel their service, is a Constitutional power, no doubt, in all the States, as it is in Pennsylvania, and the Federal power over them is defined by the Constitution of the United States. I will assume, for the sake of argument, without otherwise conceding the point, that the right of the Federal Government, under the fifteenth power of Congress "to provide for calling forth the militia to execute the laws of

the Union, suppress insurrections, and repel invasions," is a right superior to that of the States. That although they are a State force, "the militia of the several States," as they are called in another part of the Constitution, they can be taken out of the hands of the States in the cases mentioned in the fifteenth power of Congress. Militia are not recruited, they are drafted; their service is compulsory, and has been since the days of Alfred. Regular armies, so we say, are recruited, not drafted; their service is voluntary, not compulsory. When the Constitution of the United States gives to the Federal Government power over the State militia, they give them compulsory power by the unmistakable language of the Constitution; for when they say *militia*, they speak of a force which serves in no other way than under draft; when they say *raise and support armies*, they mean what are called regular armies, as contradistinguished from militia, and the question arises, do they mean regular armies, raised not only by recruiting, but compulsorily, too. The militia are the antagonist muscle to the army. No militia ever was dangerous to liberty; they are among the pillars of liberty. The militia are not, like regular armies, a separate establishment, they are the people themselves. To compel militia service, and to compel service in the regular army, are not only not the same thing, but they are, so far as liberty is concerned, the very opposite of one another. They were so regarded in the Convention which framed the Constitution, and by all the State Conventions which debated it. Everybody familiar with them knows that. It must always, too, be borne in mind, in speaking of drafting, even for regular troops, under the Confederacy, if any such drafting there was, that regular troops then were on the militia basis in this all-important particular, that they were officered by the State up to the rank of Colonel inclusive. Congress appointed no officer under the rank of Brigadier-General. The danger in a conscription is of tyranny, which ceases to exist, as soon as you give to thirteen or thirty-four different States the appointment of regimental officers. This State power might damage or subserve discipline. I say nothing of that, but an army influenced from thirty centres, is, as an instrument of tyranny, very different from an army influenced from one.

If it were necessary to insist on the difference between a conscription in the time of the Confederacy and in the time of the Constitution, it might be carried out to any length. The troops of the Confederacy were paid by the States, not by Congress; each State paying its own men. Nor could Congress exercise any of their more important functions, among the rest requisitions on the States for



troops and money, without the consent of nine States, so that in effect the States were masters of the Congress, army, and all.

I proceed to the supposed precedents, the question being whether in them we find what will warrant this military conscription, attempted under the act of Congress of the 3d of March, 1863.

I begin with what is called General Knox's plan, to be found on page 2088, and the twenty following pages of the Appendix to the Second Volume of Gales and Seaton's Congressional Debates. General Knox, who was the first Secretary of War under the Constitution, was also at the head of the War Department under the Confederacy, and his plan, so far from being framed with any view to the provisions of the Constitution, is declared, in his letter to the President, to have been first presented by him to the old Congress, before the adoption of the Constitution, and therefore referred itself to State power altogether, Congress having at that time no power to raise armies. This ought to settle it as a precedent; but it is said to have been approved by Washington. This is out of the question if it be meant *Constitutionally* approved, the plan having been drawn up before the Constitution existed.

Washington may have given it more or less military approbation, but his message, communicating it to Congress, dated the 21st of January, 1790, which will be found on page 1076, of the preceding, or first volume of the debates, studiously avoids even that. The whole message reads thus:

"Gentlemen of the Senate and House of Representatives:

"The Secretary of the Department of War has submitted to me certain principles, to serve as a plan for the general arrangement of the militia of the United States. Conceiving the subject to be of the highest importance to the welfare of the country, and liable to be placed in various points of view, I directed him to lay the plan before Congress, for their information, in order that they may make such use thereof as they may judge proper.

GEO. WASHINGTON.

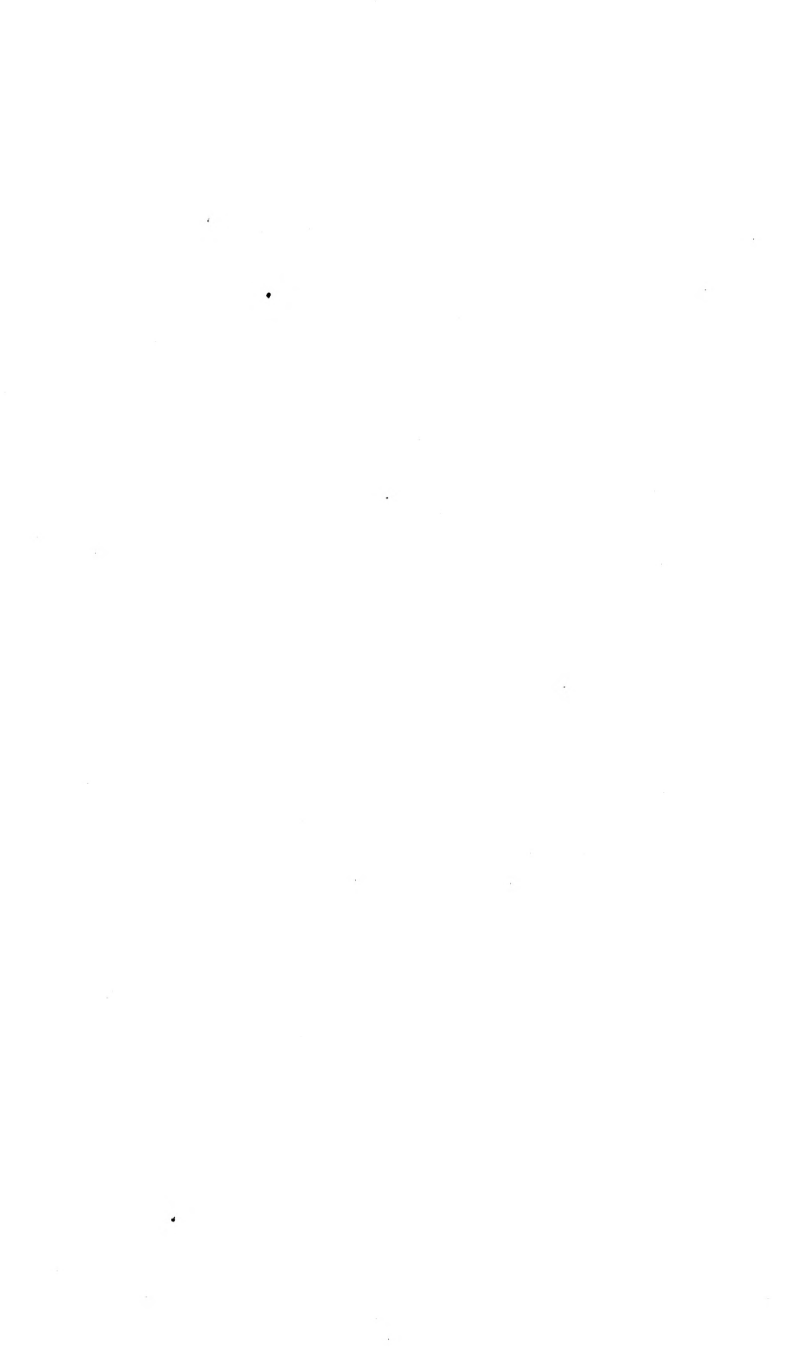
"January 21st, 1790."

General Knox, therefore, was left to his own merits, altogether, though it is true, he says in his communication to the President of the 18th of January, 1790, that he "had approved the general principles thereof with certain exceptions," and that he had modified his plan according to the suggestion of the President, but Washington does not say so. What then were his merits? That is difficult to say, for his scheme set out at tedious length, is hardly intelligible. It is a plan for the organization of the militia. It is entitled "General Knox's Militia Plan." Washington calls it, in his message, "a plan for the general arrangement of the militia," and General Knox, in submitting it to Washington, calls

it "a plan for the arrangement of the militia." Accordingly, it is developed by its projector in his voluminous paper as a militia plan for exercising all the youth of the country in military life during a few days of each year, in a manner which he describes and recommends. With the militia project he seems to mix (whether he does or not I leave to those whose study of the paper has been more successful than my own, though I have taken much pains to understand it), what has been supposed to be a scheme for supplying an army by taking men from the different militia corps. But he does not say there is to be any compulsory draft of them, any forced service, which is the only point of interest to-day. I quote all he says which appears to go to that point: He says, at page 2093, "all requisitions of men to form an army, either for State or Federal purposes, shall be furnished" from the militia organization; and this is the first announcement of what is now thought to be General Knox's germ of a conscription. Further on, at page 2094, he says: "The men who may be drafted, shall not serve more than three years at one time." From these two phrases we are left to infer that in the militia, we were to find a regular army; but in the whole paper we see nothing of forced service. The call might be for volunteers, or might be satisfied by a small fine. Let counsel put their finger upon any thing more in all this labyrinth of matter. In short it may be said of General Knox's plan, that nothing approaching or resembling the present scheme is to be found in it.

Whatever it was, it does not seem to have had the active sanction of any one man in the whole country. Congress organized the militia, after much debate, which is to be seen in Gales and Seaton, by the act of 8th May, 1792. Not a feature of General Knox's plan was adopted; I do not perceive that one single word was bestowed on it. His views were not so much as referred to or mentioned on the floor of Congress. Congress no more than Washington, sanctioned them. Washington said that the subject of militia "was of the highest importance to the welfare of the country," and "liable to be placed in various points of view," he therefore directed General Knox's militia plan to be laid before Congress "to make such use thereof as they may judge proper," and Congress thought proper to make no use of it at all. So let it rest.

A contemporaneous fact with that of General Knox's scheme, and which like that is really nothing but a militia fact, has been used against us. It is said that Rhode Island in coming into the Union proposed an amendment of the Constitution to the effect "that no person shall be compelled to do military duty, otherwise than by voluntary enlistment, except in cases of general invasion, any thing in the second para-

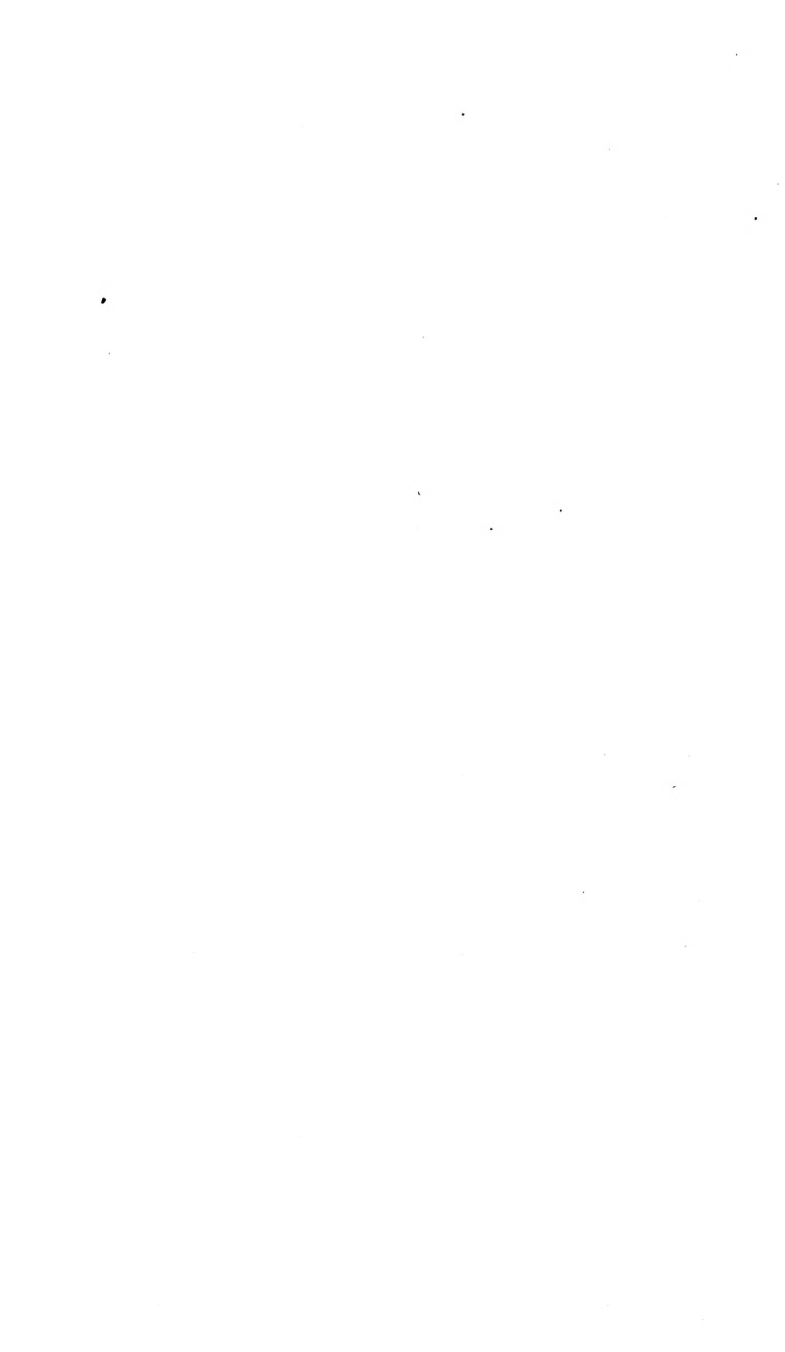


graph of the sixth article of the Constitution, or any law made under the Constitution, to the contrary notwithstanding." And what does this mean? Surely not that the people of Rhode Island thought Congress could constitutionally raise soldiers by force. It appears to demonstration in every debate in every convention, State and Federal, and every out-door discussion which took place while the Constitution was before the country, that no being in those days ever imagined compulsion to be in the Constitution as a mode of raising armies. That, I say, is demonstrated by the fact that the fiercest and most ingenious opposition was made to giving Congress any army-raising power at all, as being dangerous to the citizen, and yet nobody saw in it, forsooth, the greatest danger of all. Had it been seen, the Constitution could not have received the vote of one State of the thirteen. They wished to leave the power to raise armies with the States, or limit it to time of war, or to a certain force only. But a conscription! Nobody thought of such a thing. It is like the discovery of the President's right to suspend the *habeas corpus*. Both were discoveries made seventy-five years after the fact, after the world had been all that time unanimous to the contrary. Thirteen States held each a convention, and debated the proposed Constitution. Their debates are extant, many of them, those of Virginia alone occupying a thick octavo volume. Opposition to the Constitution ran high. The North Carolina Convention rejected it. Rhode Island, at first, would not call a convention to consider it. New York was as near rejecting it as possible. In Massachusetts and Virginia the vote was close. In the Federal Convention some members refused to put their names to the draught, and others retired altogether. The Federalist appeared. The press of the country teemed with the conflicting views of the people of the States, the main difficulty everywhere being, as Patrick Henry expressed it, that Congress had both sword and purse, and it was more than consisted with the independence and safety of the States, yet nowhere did the statesman arise and utter the one word which would have given him instant triumph—the word military conscription. No, the objection was to giving Congress power to *recruit* an army, to raise one at all. Into the recesses where lay the conscription power, ingenuity never penetrated—even the eloquence of Henry never flashed. What, then, did the people of Rhode Island mean by this proposal of theirs? Simply that they did not think they ought to be compelled to do militia service as General Knox thought, and most men thought they ought ~~whenever called on~~. They thought it ought to be only in the case of an invasion. In all others, they thought "no person should be compelled to do military duty otherwise than by voluntary enlistment;" and hence their proposed amendment.

Little did they think of more. They were against—as appears by another of their proposed amendments, the twelfth—any standing army at all in time of peace. They proposed an amendment to that effect.

I take up the English precedents. What are they? They are admitted to be no more than the statutes of the beginning and middle of the last century, by which Parliament seized on beggars and vagabonds of various kinds, whom they were, and yet are, in the habit of committing to work-houses, and put them into the army! Can it be imagined that this is a case in point? Only conceive a bill introduced into Parliament to-day for carrying off the able-bodied Englishmen between the ages of twenty and forty-five, including the judges of the Courts of law and equity, and making common soldiers of them, and the ministry of the Crown justifying it under these aristocratic and almost forgotten efforts of a century ago to force into the ranks, instead of putting in jail, the dregs of their population. Yet this is the whole story. Go back about one hundred years more, to the days of Queen Elizabeth and her father, and we will find these same persons, who more recently were punished by being drafted, branded by act of Parliament and sold for a term of years for the first offence—which was begging alms, just as it was in the statutes cited in the time of Queen Anne and her successors—branded and sold for life for the second offence, and put to death for the third. But are these to be considered as part of the English Constitution, or even of their laws, which they are less than ashamed of now? I go for the answer to a note to page 212 of Hallam's *Constitutional History*, seventh edition, volume 3. "A bill was attempted in 1704 to recruit the army by a forced conscription of men from each parish, but laid aside as unconstitutional. *Boyer's Reign of Queen Anne*, p. 123. It was tried again in 1707 with like success, p. 319. But it was resolved instead to bring in a bill for raising a sufficient number of troops out of such persons as have no lawful calling or employment. *Stat. 4 Anne*, c. 10, *Parl. Hist.*, 335. The parish officers were thus enabled to press men for the land service; a method hardly more unconstitutional than the former and liable to enormous abuses. The act was temporary, but renewed several times during the war. It was afterwards revived in 1757 (30 *Geo. II.*, c. 8), but never, I believe, on any late occasion."

I do not know that among English Constitutional writers, I could offer to the Court more judicious authority than Mr. Hallam. Occasional outrages do not make rules of constitutional law. In England armies were raised constitutionally by recruiting, and when the people gave Congress the power to raise armies, they meant the constitutional rule, and not the unconstitutional exception. But the best answer to



these exceptional facts, and one which seems to be altogether conclusive, is found in the very next of the powers of Congress to the army-raising power—I mean the thirteenth—"the power to provide and maintain a navy." It is said that the framers of our Constitution were familiar with these British statutes, which I beg to doubt, for they have to be looked for and rooted out from among its dust and rubbish; and no man, for a moment, could have thought of them as precedents of English constitutional law. But, beyond all question, they were familiar with British impressment. That was a fact familiar enough to them. Why then is it not urged that by the thirteenth power, "to provide and maintain a navy," Congress was armed with the right to send out a press-gang to find sailors for our ships of war? Why is not the argument, "Oh, yes, Washington knew the British navy was thus manned; Madison knew it; Franklin knew it; they all knew it; it was familiar to them,"—how then deny that power "to provide and maintain a navy," excludes the very means they were most familiar with? I will give the reason. It is because while a press-gang, which pressed for the most part sailors only, would be infinitely less abominable in itself, and quite as constitutional as this conscription, which takes everybody, yet the country stands pledged against it. We went to war against it. We have denounced it in every way; at every stage of our national existence, from the presidency of Washington to the peace of Ghent. It has been the subject of too many speeches in Congress, too many State papers. It is *too late* to talk of its being Constitutional. Hence the strange distinction we hear made between an army to be supported by a conscription and a navy for which there is no press-gang. But let me remind the Court on the point of English precedents of conscription, that if there be one French institution more than all others against which the writers of England have exercised their wrath and dipped their pens in gall, it is that of the conscription. It would be easy to find pages of writing by their authors and declamation by their orators on this subject, showing not only that they did not know this precious fact that a conscription consorted with the English Constitution, but exhibiting a national horror and universal detestation of it. But I will not do that. I will only quote in evidence of sober English opinion a few lines from a publication of a literary character, and reasonably to be supposed as free of mere prejudice as any, I mean the British Encyclopædia. I read from the 8th edition, volume vii., Title "Conscription."

"*Conscription*, the plan adopted by the French and some other nations for recruiting their armies. *The code de la Conscription* forms a part of the French system of jurisprudence, and furnishes the most

complete body of regulations for working this tremendous engine of military depotism. * * * * This system of conscription is no doubt a simple and ready means for obtaining the requisite numbers of soldiers; and so would a system of confiscation be a ready means for obtaining funds for carrying on a war. In fact, the conscription is a system of confiscation; it falls with peculiar hardships upon the poor, and upon those of slender fortunes. When dragged from their peaceful pursuits, their prospects in life are often ruined; and whether they sacrifice their domestic happiness and join the ranks, or ransom themselves at the expense of their small property, they are equally despoiled of their most valued possessions. * * * Were war and conquest as in some of the States of antiquity, the great object and business of a nation, then it might be advisable to have such an organization as would furnish a constant supply to replace the wear and tear of successive military campaigns, and the population at large might be treated as the *matériel* for this purpose; but since civilized nations have learned to consider war as an unmitigated evil, to be encountered only when every means to avoid it consistent with safety has failed, it is surely unwise to have recourse to an organized system of compulsion to force a large portion of the population to forsake the arts of peace," &c., &c., &c. This, I quote, as a mild form of the expression of English opinion on this subject.

To every word of what Mr. May says in his second volume, page 260, as quoted against us of a "forced levy of men for the defence of the country," I agree without hesitating. He speaks of what I have already said no man ever denied—the great right of every country to the personal service of every citizen when the country needs them for its defence. But he does not say that a military conscription is to be found in the British Constitution. To tell an Englishman that, would surprise him not a little. He might ask the question, on what occasion since the conquest of the Island it had been used? The habits of the people of England, like our own, are those of trade and industry; and when England is at war, which is not seldom, one of the perplexities of the minister is to fill the ranks of the army; they resort to the very discreditable measure of hiring other people's soldiers to fight their battles for them. They are more expensive than their own men, and necessarily less effective; but though they have a redundant population they cannot get recruits. The constitutional right to impress for the land service is one, of which, if it existed, the first lord of the treasury would very quickly avail himself.

I come to the attempt at what is called a conscription, in the war of 1812. After the capture of Washington, when Congress was in special

session, the Chairman of the Military Committee, of the Senate, Mr. Giles, of Virginia, by letter dated September 23, 1814—I read from Gales and Seaton, 13th Congress, vol. iii., page 1502—called on Mr. Monroe, the acting Secretary of War, to make known to the Committee the defects of the military establishment, and the remedy for them; and Mr. Monroe, by a communication dated the 17th of the next month, submitted to the Committee what he called a report, by which he informs them that the army then consisted of 62,448 men; that he thought a force of not less than 40,000 men more ought to be added to them, to be raised, these are his words: “for the defence of our cities and frontiers under an engagement by the Executive with each corps, that it shall be employed in that service within certain specified limits;” and he goes on to explain how he thought those 40,000 men ought to be raised, suggesting four different plans: one was to increase the bounties; another to exempt from military service every five men who would procure a sixth to serve the war through; another was to divide the militia into classes and give the President power to call out any portion of any class he should think necessary, to serve two years; and another was the proposal supposed to resemble the gigantic scheme of tyranny which this Court has condemned. It was this: here was the mode by which Mr. Monroe proposed to get his 40,000 men. Every hundred men of fighting age were to furnish four persons to serve during the war, and each class, as he called them, of one hundred men to be formed “with a view to the equal distribution of property,” were his words, “among the several classes,” that is to say, the system was to be such as not to grind the face of the poor only. And where, the Court will ask, were the Provost-Marshal? Mr. Monroe proposed to place the drafting power in the hands of either the county courts, or of militia officers of the districts, or of persons appointed there for this particular purpose. This was the whole of the mild and gentle plan which is compared with the ferocious act of the 2d of March, 1863—40,000 men to be raised for a service which I should call a militia service, for they were to be raised for the defence of our cities and frontiers, under an “engagement by the Executive with each corps, that it should be employed in that service within specified limits,” and that means militia. The militia, a service, which is compulsory, is limited in time and place, and this was limited in place but not time. It was the proposal to Congress of a most respectable gentleman, who had then, however, been in the War Department so short a time, that, as he said to Mr. Giles, in a letter dated a few days later than that which I have quoted from, his time was too short for him to become acquainted with “all its offices.” Such was the plan, no more; but such as it is,

it is attempted to be saddled upon the great party then in power by their enemies who are now in power, as their plan, their scheme, the scheme of the party which now opposes a conscription. Now, how was that? The Chairman of the Senate Military Committee writes immediately to Mr. Monroe that he had not lost a moment in laying his letter before the committee; that they had instructed him to call on Mr. Monroe "for an outline of the plan for *raising* 40,000 men," "and particularly how far limitations are proposed to be imposed by law upon the President of the United States, in the application of that force;" the committee thus seem to start at any thing that looks like mining the Constitution, and demand an explanation from the Secretary, who says to them in answer, that he will, for that purpose, call in person upon the committee the next day. Mr. Giles replies that the committee will be happy to see him, and there ends the correspondence.

But the plan is said to have had the approbation of the Administration of that day. Mr. Monroe could not, they say, otherwise have sent his communication to the committee. But Mr. Madison, the head of the Government, gave it none in his message to Congress, delivered the 20th of the preceding month of September: he makes no allusion to it. It was a war message at a special session, just after the capture of the capital, when the army and the navy, and the means of strengthening them, were the only subjects treated in it, and addressed to a Congress sitting in the Post-Office building, because there was no longer a capitol—their own hall was a smoking ruin. It had been burned by the enemy. Was this a moment, if Mr. Madison supposed they were constitutionally entitled to make a draft, to hesitate to say so, when the armies of Great Britain, relieved by the treaty of Paris from their European enemies, were coming in renewed strength against us across the water? It appears to have been, Mr. Monroe's ~~project~~, who was a military man, and of nobody else connected with the Executive. In the House of Representatives the same communication as that to Mr. Giles was made by Mr. Monroe to the Military Committee there, of which Mr. Troup was the Chairman. Mr. Troup laid it before the House on the 27th October, but does not seem to have reported a bill in accordance with it; on the contrary, bills of a different character were reported, and on the 6th February following he gave his reasons for his course, which I read from Gales and Seaton, 1129, vol. iii, 13th Congress. After alluding to Mr. Monroe's proposal, he went on to say that it "had been proposed to Congress to augment the regular force to 100,000 men, for which purpose it was proposed to resort to the most energetic means. It was neces-

sary for the Committee of this House to endeavor to ascertain the opinion of both branches of the Legislature as to the different modes of raising men. We did so, and found that no efficacious measure, certainly and promptly, to fill the regular army, could be resorted to. * * * This being ascertained, other measures were adopted, &c., &c." So spoke the disappointment of Mr. Troup, for he was, as appears by the debates, in favor of the scheme. We have, in what he said, too, the answer to the suggestion that Congress did not adopt Mr. Monroe's scheme, because the peace of Ghent immediately followed and made it unnecessary. It appears, on the contrary, from Mr. Troup, indeed from the whole course of what took place in Congress, about this time, that though the treaty of peace arrived in this country, soon after, in the following month of February, no idea of what was coming was then entertained. When Mr. Troup canvassed the Senate and House for Mr. Monroe's scheme, things were at their blackest. But this is not all. Not only was "the opinion of both branches of the Legislature" against Mr. Monroe, but their opinion of its unconstitutionality was made most strikingly to appear. The project in the course of the debate on other bills was seized upon by the opposition and violently assailed in both Houses, by some of their ablest men. Mr. Mason and others in the Senate, Mr. Webster and others in the House, went out of their way to reach the means thus of heaping odium on the Administration, then staggering under the loss of Washington; and yet not a man that I can find in either House, with the single exception of Mr. Harris, of Tennessee, a member of the lower House, so much as attempted, and his attempt was a very ineffectual one, to maintain the constitutionality of the Secretary of War's scheme. Some half dozen members declared themselves in its favor, and said they regarded it as constitutional; but where was the argument to show it, the course of reasoning to maintain its constitutionality? Why was it all left to Mr. Harris? why was it not only not brought forward by the dominant party, but allowed to be shaken in their faces as a disgrace to them and their constitutional principles? Why was this, when the passage of such a bill, if constitutional, was of all other things the most to be desired by them? I do not think it can be shown that six members of Congress, counting them in both Houses, declared themselves in favor of the project. I will only add that the party and the Administration which now are charged with having favored this plan, were in a majority of upwards of thirty votes in the House, and a still larger proportional majority in the Senate—majorities large enough to have insured the passage of the measure in the face of any but constitutional objections.

But the proofs do not rest with the negative. They commit against forced service not only Mr. Madison, but the whole executive, Mr. Monroe himself included, who seems to have brought forward his plan of October, 1814, under pressure of the events of the hour, quite forgetting the position he had taken as lately as in April, 1813, only eighteen months before. On the 15th of April, 1813, I read from Gales and Seaton's, page 1292, 13th Congress, vol. iii., Mr. Monroe, as Secretary of State, addressed a long dispatch to the American Commissioners, appointed to treat for peace with Great Britain. It is the instructions to them of their Government, detailing the terms on which they were to treat, and the views of Mr. Madison and his constitutional advisers, on the questions at issue between the belligerents, among others, that of impressment. The English Government, it seems, made a sort of offer to justify their own practice by saying that the same was open to us. In answer to this, Mr. Monroe says :

"The remark contained in the declaration of the Prince Regent, that in impressing British seamen from American vessels, Great Britain exercised no right which she was not willing to acknowledge as appertaining equally to the Government of the United States, with respect to American seamen in British merchant ships, proves only that the British Government is conscious of the justice of the claim, and desirous of giving to it such aid as may be derived from a plausible argument. The semblance of equality, however, in this proposition, which strikes at first view, disappears in a fair examination. It is unfair, first, because it is impossible for the United States to take advantage of it. Impressment is not an American practice, but utterly repugnant to our Constitution and laws."

Here we have unequivocal evidence of the views of Mr. Madison on forced service in the navy and in the army too, unless, which would be difficult to discover, forced service is constitutional in the army and unconstitutional in the navy. Mr. Monroe's letter to Mr. Giles, probably was seen by the President before it was in print, but it was not only unnecessary that if he thought the scheme not consistent with the Constitution, he should prevent its going to the committee, but it would have been imprudent to suppress it, unpatriotic upon an as yet undebated question to keep this letter back from Congress. Congress might satisfy him he was wrong; they might reject the scheme themselves, and spare him all responsibility; they might pass a conscription bill, and he might sign it, constitutionally disapproving it withal, as he signed the bill admitting Louisiana into the Union, in 1811. Mr. Monroe's letter to Mr. Giles may well have contained no opinions but his own; but his note to the ministers negotiating with Great Britain, could not have left Washington without being earnestly and often scanned



by the President and his whole Cabinet, and doubtless other leading men of the day, too; for it was the instructions for one of the most important of Executive acts, the responsibility of which was executive merely.

The supposed drafting by the States during the war of the Revolution is the last and only one of these precedents remaining to be noticed. Two authorities are cited against us, Marshall, in his *Life of Washington*, and Ramsay's *History of the United States*, if unsupported individual averment is to be called authority. What they say is of the briefest. It pretends to no detail, and really gives no information. In the first place, let me say, whatever happened was at a time when not only the States were pushing their lawful authority to its extremest limits, but law was really in abeyance. We were in the midst of a struggle for the right to make our laws. The Country was unborn or at least in the throes of its birth. The only specification by either of these two writers, which we have the means of fairly reaching, that of our own State, is given by Ramsay as a case of what now would be called, I presume, *military necessity*, notwithstanding that the Constitution of Pennsylvania, of September, 1776, distinctly declares that "the military should be kept under strict subordination to and governed by the civil power." It would be no precedent, nor could be any of the revolutionary cases. They may not have been accompanied by a declaration of martial law, but they happened when the laws were silent. How can they be examples of the policy of State? They happened when society was in the condition which precedes the formation of a State. It may not have been chaos, but it certainly was before solidification had taken place. Nor does it seem to be very logical to argue from the fact, if it were so, that the States drafted constitutionally when their sovereignty was almost unlimited, that therefore the Federal Government may under the Constitution of the United States. But what do they tell us was done? They tell us little or nothing. Nor has diligent examination enabled counsel to ascertain that there was really any thing to inform us of. Had there been conscriptions they would make a great and interesting chapter of our revolutionary annals. Everybody would be familiar with it. Conscription is a wound which would be sure to leave a scar, yet it has proved impossible to find it or any trace of it. This revolutionary drafting was familiar to the framers of the Constitution and the people of their day; that is the allegation here. Where is the evidence of that? in what States were troops so obtained? States no doubt called on their counties for so many men, and amerced them if they did not provide the soldiers; but let it be shown that a conscription law, or that any writer says that a con-

scription law was passed, or not to dispute about words, that any law was passed, by which the man whose personal service was called for, was carried off bodily if he did not furnish a substitute or pay a sum of money in commutation. It is one thing to fine a man for non-attendance to render military service, and another to seize his person if he does not attend, and compel the service. Do Ramsay or Marshall say that any State during the Revolutionary struggle ever went further than to raise their quotas of men for the army as they did their militia, by calling them out, and fining them, or their county or district, if they did not come. Drafting, which is the word used by the only two authorities which have been cited, is a word long in familiar use as applied to the militia service; they say militia drafts—drafting the militia, meaning the system by which they are called for and fined for non-attendance. Was the drafting to which Ramsay and Marshall refer, more than that? A militia draft or a regular army draft, but with in either case, a fine only for non-attendance? But whatever may have been the legislative enactments, whether according to them a simple fine or the actual seizure of the person, and carrying the man off to camp was the consequence of not answering to the draft, did the thing ever happen? Is there any reason to believe that the ranks were filled in that way?—or that a single soldier was ever added to the army, at any period of the war, from any State of the thirteen by forced service? Does history tell us that? Marshall says, “in some instances a draft was to be used as a last resort.” Was it used? *were* men so procured? Ramsay says, “the deficiencies were by the laws of several States to be made up by drafts in lots from the militia.” Again, was it done? Was it successfully attempted? He mentions three States, Maryland, Pennsylvania, and Virginia. He goes on to say, that in Maryland the only consequence of the soldier's not being forthcoming was a fine imposed on the county, which was applied as bounty to recruits. In Virginia, the language of the historian is too vague to tell what the character of the laws was, or what was done under them. But the statutes of that State show that in every case of draft during the Revolutionary war, with one exception, which was the year, I think, 1777, the payment of a fine saved the drafted man or the district to which he belonged.

It may have been so in 1777, too. The last case Ramsay cites is that of Pennsylvania; and there we have the means of satisfying ourselves conclusively that Pennsylvania submitted to no conscription. What Ramsay says is, that “Pennsylvania concentrated the requisite power in the hands of the President, Mr. Reed, and authorized him to decree forth the resources of the State under certain limitations, and if necessary, to declare martial law over the State.” Now here, I say, we know what

were the facts. I find in the life of General Reed, published in 1847, a letter to him of General Washington's, dated the 4th July, 1780, in which he refers to those powers vested in the President and Council of Pennsylvania, and urges that the Pennsylvania line should be filled by drafting. The letter is at page 220 of the 2d volume. What was the answer, which is at page 225, and is dated the 15th of July, 1780? General Reed says: "I pressed this measure last March with all my might, but without success;" "the assembly would not venture to pass the bill, nor if they had, do I now think it would have been carried into execution." I do not say, it would be rash, to make the assertion, that for the army in those days, not a man was obtained on compulsory service, but I do say, that after much inquiry into the fact, we can find no trace of it remaining; and I challenge the proof. In conclusion, as to the question of precedents of conscriptions, let me say that a conscription, in the sense of this law, of the 8th of March, 1863, I mean as an institution or feature of a government not despotic merely, never was imagined; the idea had not birth before the year 1798, ten years after the Constitution of the United States was adopted, and therefore could not possibly have been what has been called *familiar* to the framers of the Constitution. It was one of the vast conceptions of the men who carried through the French Revolution. The British Encyclopædia, of which I read the extract, attributes it to Carnot. It is generally thought to belong to Jourdan. It became the mode, whoever was the father of it, in which the armies of that military people were supplied, and such it remains. But as a source of warlike power for a free people, among any but a people who ~~did not~~ belong to a master, it never before was conceived in modern times. Ancient Rome has been cited against us. We know little more of the social structure of ancient Rome, than we know of that of the tribes of Israel, and can safely draw no precedents from such quarters. But this we know, that the inhabitants of Rome were originally a handful of plunderers, whose sole occupation was inroads on their surrounding neighbors, and that this, their early character, was changed in after days only in the scale of its operations. They enlarged and civilized it; but it was substantially the same character. What we call a conscription, till 1798, was simply the recruiting engine of absolute governments, to which every thing, either in real or chattel ownership, belonged.

One other fact before I leave the question of precedents. This is called a conscription, after the French corresponding fact, but we do French statesmen injustice if we suppose they have any such hard and barbarous enactment on their statute-book as this. Ours is a lottery, in which human flesh of all ages to past middle life, is put into the

wheel, and any number of times. A man of forty-four is no longer young, and may be drawn; and a man of twenty may be put into the wheel twenty-four times before he arrives at the age of forty-four, should the Commander-in-Chief be pleased to make so many calls. Nor is there a limit to the number of calls on the same person for tours of duty. He may have only returned home, to be again called for. He is never free. Now what is the French conscription? They put upon their list their youth between the ages of twenty and twenty-one, and none others; and if the man escapes one drawing he is free of the conscription for the rest of his life. So, when he serves once, he is free for the rest of his life. He is taken for a soldier, if, at all, at twenty years, before his ties are formed, before he has entered the career of life, and not, as with us, ruthlessly. He serves, it is true, in France, for seven years, but the exemptions with them are numerous and humane. Beside persons necessary to the support of parents, or of the old or infirm, the married are exempt, and those preparing themselves for the education of youth, and others not included in our lists. But what draws the broad line and makes a gulf of difference between us and them, is the fact that if the man is taken, he can be taken but once, and then he is taken young, and not in middle life, when he must be torn up by the roots.

Having disposed of the facts. I come to the question of law. Have Congress the Constitutional power to institute in this free country a military conscription? To sweep into the ranks of the army the unconsenting?

It is said that this army-raising power is an *unlimited* power in its language; and how can we, it is asked, restrain the application of an unlimited authority? The position also is taken which is to give force to this, that "the powers of the Federal Government are limited in number, not in their nature;" that the rule that ours is a Government of limited powers, "is of value when the inquiry is whether a power has been conferred," and not of value when the question is the interpretation of a power expressly given; and *Gibbons vs. Ogden*, the steamboat case, is quoted to sustain the position. But *Gibbons and Ogden* was not a case where the question was whether the freedom of the people could consist with the uncontrolled exercise of the power. To raise armies is a general phrase; but when you say it is an unlimited power, that I deny.

The first article of the Constitution says that each House of the Legislature "may punish its members for disorderly behavior." No phrase could be more general, but is the power unlimited? Could they punish with death? Would not any court grant a *habeas corpus*,

if there were such a writ, to bring up the body of a member of Congress under sentence of death for a breach of order? But in Constantinople such a sentence would astonish no man; it would accord with their institutions. The difference between a limited and an unlimited government, makes the difference between a limited and an unlimited power, and makes general mean unlimited there and not here. Organic law deals in general terms. Some things only of those which it orders and directs can be reduced to certainty.

The Executive, says the Constitution, can serve only four years under one election,—that is a rule which would mean the same thing in all countries; but when the paper goes on to say that he is to “take care that the laws be faithfully executed,” that means one thing or another according to the meridian. It would mean unlimited executive power in Russia,—it here means that the laws should be carried out by the Executive. I venture the position that no general language of the Constitution can *per se* make an unlimited power; and that if the language is only general, and the power if not limited is against the spirit of our institutions, the rights of the States or the liberty of the citizen, the doubt will be resolved against the power. And of this we were assured in the strongest terms by Hamilton himself, in his argument on Bills of Rights in the Federalist; and if the people had not believed him this Constitution never would have been adopted. He told them that the Constitution was a Bill of Rights without saying so, that all those immunities, which are privileges in other countries, and specially bargained for, are a birthright and unquestionable with us—that it was not necessary to go them over in order to give color to our institutions. Nay, he said, a bill of rights was actually objectionable, because perchance, by its want of fulness, it might throw a doubt on what, in the absence of an enumeration of them, was beyond a peradventure. Now I know very well the cry is: Why, a conscription is liberty; it is the very mode of raising soldiers for a free country. That is a question to which I will come. All I say now is, that a power of Congress in however general language, which interferes with the perfect freedom of the citizen or the rights of the States, is not unlimited. It is open to interpretation. I say that Congress cannot raise and support armies, cannot provide and maintain a navy, cannot lay and collect taxes, cannot use any of their powers, cannot even make rules for the government of the land and naval forces, or exercise their exclusive legislation in the District of Columbia, under the general language in which those powers have been granted, in such manner as to warrant their being called unlimited powers. So we were told by those who framed and offered the Constitution for our acceptance. This gene-

rality of some of its expressions was objected to, and the States hesitated, but they were reassured by the writers of the *Federalist*, and other good men; and the argument was, that it was utterly out of the question, that the laws of a perfectly free people—laws which were not imposed on them, which they took upon themselves, and so declared on the face of the paper, for the very purpose of guarding and protecting them in their better enjoyment of their liberties,—should ever be construed into the means of tyranny. This same doctrine of unlimited powers now taken in ultra-federalism was the weapon of opposition of those who originally opposed the federal compact. They said these powers were unlimited. The answer then is the answer now—they are not unlimited. When Hamilton, as quoted by the learned Judge, urges in one of the numbers of the *Federalist* the adoption of a Constitution, with an army-raising power without limitation, he meant, as the text shows, without the limitations proposed at that day by those who thought Congress ought not to have more power than the old Congress had to raise armies—that they ought to be limited, at all events, to raise armies only in time of war, or to a certain numerical force. He was the same man who, in the same papers, joined with Mr. Madison and Mr. Jay in giving all these assurances, then deemed so sweeping, so satisfactory, and so unequivocal. The very atmosphere of the Constitution, these men told us, was freedom. The Constitution was bathed in liberty, and was invulnerable. So we were told then; and in that way the adoption of the Federal Constitution was brought about, whatever they may say now. But let us put this doctrine of unlimited power to a very simple test. Let us see how many of the powers of Congress will sound to folly under such a reading of them.

I take them up in their order. The first is, “to lay and collect taxes, duties, imposts, and excises to pay the debts, and provide for the common defence and general welfare of the United States,” &c. How shall these taxes be collected? If the power of collection be unlimited, they might be collected with us, as in 1787 they were in many parts of Europe, by farmers of the revenue, a species of contractors, who, having paid the Government what it was estimated the country would yield, were commissioned to go out and get back their money with a profit on it, and to effect this were armed with all sorts of high powers to trample on the people. Pennsylvania would be given to one contractor, New Jersey to another, and they would use their unlimited powers as best they might. As to the common defence and general welfare clause it is plain enough, from what we hear every day, that if those words be read without limitation, there is no pur-

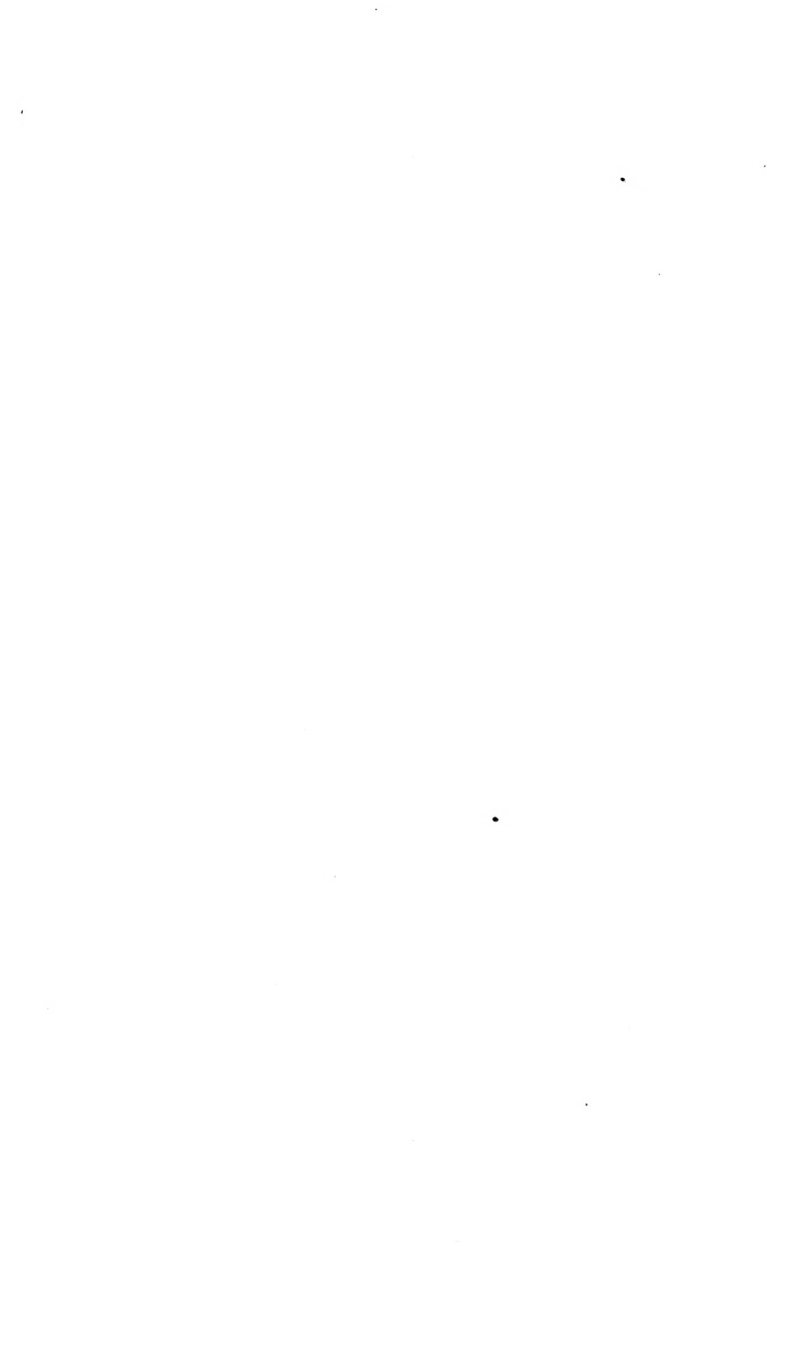
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pose of power which they would not answer promptly, perfectly, and to the absolute ruin of our liberties. The next power—the second—is “to borrow money on the credit of the United States.” Here I repeat the question put in Congress in 1814, does it mean borrowing money in the way so common among the nations of the earth, on forced loan? If you raise armies by force, why not money? The third and fourth I pass. The fifth is to coin money, which, by the same unlimited interpretation, already means to coin it out of paper. The sixth power provides for the punishment of those counterfeiting the coin of the United States. Will any man say that, before the amendments of the Constitution, made in 1789–90, by which cruel and unusual punishments were forbidden, it would have been constitutional to put to the rack a maker of false money, or waste with fire and sword his houses and lands? The seventh power authorized Congress “to establish post-offices and post-roads.” Unlimited again—a common mode of making Government roads at that day, was by making the population living at the road side, leave their own work and crack stones for the public highways. Could Congress order out the free and independent electors to do that? I pass the eighth and ninth. The tenth enables Congress to punish offences committed on the high seas and against the law of nations. If their power be unlimited, they could punish these offenders by the torture, as they could those who counterfeit their coin.

The eleventh is to declare war. Could they declare war against a State? The twelfth brings us to the power immediately before the Court, “to raise and support armies.” If this power be unlimited to the extent of forced service, Congress may go all lengths. Instead of forcing us to service for three years, it might be for ten years, or for life, which was the common term of service—being voluntary, however—in the British Army at the time our Constitution was adopted. Again, if they are unlimited, what Mr. Secretary Stanton tells us, by his late report, he has been doing, is all constitutional and right. He says he has imposed the conscription on twelve States. Does he mean that the rest shall go free; for the power is not limited as the taxing power is, “to be uniform throughout the United States?” Does he mean that the States which submit quietly shall be shorn, and the others go unshorn? Again, the power is to support armies as well as raise them. The commonest way to support an army is at free quarters, as was observed in Congress in 1814. Large portions of the force we have now in the field enjoy more or less of this valuable privilege. Can Congress put all on the same footing? and, when the Provost-Marshals come among us, can they

issue their requisitions for so much hay for their horses, so much beef for their men, and so much gold for themselves?

Following the army-raising power is the thirteenth, "to provide and maintain a navy." I have already said, and need not more than allude to it here, that the seamanship between the twelfth and thirteenth powers of those who direct the ship of State is marvellous indeed. I pass the fourteenth, fifteenth, and sixteenth powers. The seventeenth authorizes Congress to "exercise exclusive legislation" in any territory "not exceeding ten miles square," which may become the seat of Government. It used to be contended, when we had an entire Congress, that citizens of Virginia and Maryland, living in the District of Columbia, were constitutionally entitled to the rights of freemen of those States. But now, it seems, Congress may exercise exclusive legislation in the City of Washington, by establishing there a civil despotism, when the military rule at present prevailing is found no longer useful. Nay, they would have some encouragement, in the latter part of the seventeenth power, for making the military government permanent, for the power proceeding to say that Congress may buy, with the consent of the Legislatures of the States in which they may be, places on which to establish arsenals, dock-yards, forts, &c., also declares that they shall "exercise like authority" in the ten miles square, as they exercise in the arsenals, dock-yards, and forts. As the authority exercised in them is necessarily military, here would be, but for the doctrine of the Federalist that we are, after all, a free country, some reason for military domination over the capital. It may be truly and seriously said that, taking the text of this seventeenth power unaccompanied by the commentary of the Federalist—taking it up, and reading it, as the army-raising power has been read, by the letter, and refusing to open our senses to more, there is no reason at all why the City of Washington should not be governed—and that according to the Constitution of the United States—with power as arbitrary and unlimited as that which prevails at St. Petersburg. The eighteenth power of Congress, and the last, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof," defies commentary, and would serve as well for one form of government as another, if we did not always bear in mind that we are free, and read our Constitution with the torch of liberty in our hands. It would be like the common defence and general welfare clause in the first power—an open door to every sort of tyranny—and serve as well the purposes of an Asiatic constitution as any other, if we are not en-



titled to say when the question comes up what the Constitution means, why the Constitution means liberty. Were it not for this, the English unwritten Constitution would be nothing, and ours would be little more.

The learned Judge has referred to ancient Rome. Let me respectfully remind him that they had at Rome their Censors, whose office was to see that the spirit, the tone, the true meaning of the laws, and not the hollow meaning or letter only, was lived up to; they were, like this Court, the most eminent tribunal of the State; and it has been said by the profoundest observers, that on them, more than on any other institution, depended the safety of the Roman republic.

But this idea, that a power of Congress must be unlimited because it is conveyed in general terms, is covered by the decision in the Dred Scott case in 19th Howard, a case which has been assailed, but not in that part of the reasoning and conclusions of the Court, which alone affects the question now before this tribunal. In that case, it was decided that the word *territory*, in the second clause of the third section of the fourth article of the Constitution, when it is said that Congress shall make rules and regulations for the territory and other property of the United States, notwithstanding the generality of the word, which might include all territory of the United States, meant only territory which belonged to the States when they passed into the Union. That territory meant territory already acquired, and not that which we have since obtained. This was a point on which the Court differed, a minority of the bench being of the opinion that the word included all the territory we have, that acquired since the date of the Federal Constitution, as well as that held before; but I am not aware that any of the Judges took such ground as that the word *territory* was not like any other word to be construed and understood, that it was to be taken as it stood, and without regard to any other consideration. On the contrary, all the members of the Court agreed that this unlimited term might signify only a limited power, and they united in looking into history and deducing from it the signification of the term. Party violence and malice have exhausted themselves on the case, without making the discovery that Mr. Justice McLean and Mr. Justice Curtis, who were overruled by the rest of the Court, failed in their duty, because they did not take simply the position that *territory* meant all territory, because the language was general. Those two learned Judges have never, I believe, been reproached by the political party which took up their opinions, because, like Mr. Chief-Justice Taney's, their conclusion was that territory might mean either territory already acquired, or what was already acquired and what was acquired afterwards, too.

Neither judicial diligence nor party fury found out that the business of a Judge was, in reading the Constitution, to read it as the learned Judge in New York read the common defence and general welfare clause on the legal-tender question. The simplest form of government is despotism, and the simplest reading of a sentence is that which dismisses reason and looks to syntax only; but the laws of freemen cannot be read in that way.

“Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.” This general word territory was brought down to the territory we possessed in 1789, and the Court all agreed that what it meant was matter of deductions and proof—of the proofs of history and the deductions of reason—none of them thought they could shut their eyes to such considerations.

I may now go on further. I take up the direct question before the Court—is this act of Congress unconstitutional? Under the power “to raise and support armies,” can Congress institute a military conscription? Can they pass such an act as this of the 3d of March, 1863? The Court will allow me, first, to ask them to return for a moment, the question being the grant of a Constitutional power, and consider where we stood before the power, whatever it be, was granted. The question is where resides this power to raise armies by conscription, a power which I repeat exists somewhere and must exist. Once, certainly, the power was in the several States. It was there when we were independent sovereignties. It was there still by the Articles of Confederation, under which we went through the war of the Revolution, and which we abolished when we came into the present Federal compact. Through the Revolutionary war, and down to the organization of the present establishment, Pennsylvania and all the States raised armies for themselves. Congress did nothing but command them, and commission the officers above the rank of colonel. It did not raise them. It could not raise them. But in 1789, the States gave to the new Government power to raise and support armies, power to provide and maintain a navy, power to lay and collect taxes, to borrow money, to coin money, to declare war, and other powers which I need not enumerate. But did they give all the money-raising power, all the army-raising power, every part of all these powers? Was none left in themselves? The Constitution answers the question. Some of them they gave entire, and some they did not; they both gave to the Federal Government and retained for themselves power to raise armies, power to provide and maintain a navy, power to collect taxes, power to borrow money. All the power to coin money they gave to the

Federal Government, and all the power to declare war. The power to coin money and declare war could not exist at the same time in the two sovereignties and they gave it all. The powers to borrow money and lay taxes, to raise armies and navies, not only could subsist in both, but it was thought absolutely necessary to State safety that they should not be all parted with in favor of the Union. This right of the States, as concerns raising troops, was carefully adjusted, for it was restricted to time of war. The States cannot raise troops in time of peace, unless with consent of Congress. Here then are the two establishments, the Union, which has no power which is not expressly granted, and the State which has all power not expressly denied, the Constitution distinctly stating that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The two governments have each their army-raising power. They both have it; the State, however, having restricted itself not to use it in time of peace without the consent of Congress. In time of war the exercise of the power is equally open to both. We might have an army in the field to-day, and I will add we ought to have one, for we have been once at least within a few months actually invaded. This power then was originally in the State alone. From it has been carved out and given to the United States the twelfth power of Congress, "to raise and support armies," and the question is, whether this is more than a power to raise armies in the way in which armies were raised in the colonies, in the States, in the mother country, that is, by recruiting.

But governments have a power beyond that of recruiting; they are *parens patriæ*, and have the right to the personal service, if needed, of every citizen, just as they have to his estate and possessions. The citizen and all he has may be taken for the service of the country. God forbid the day should ever come when this power is denied or questioned. It is a right not only plain but familiar. Where, then, resides this final right of sovereignty, this right to call for and sacrifice the body of the citizen on the altar of the country? Where can it be but in the State, if it has not been expressly given away? To whom belongs whatever goes to make up what we call Pennsylvania? To whom belong its inhabitants, its lands, its waters? Certainly not to the General Government. How did they come by more power over our bodies than they have over our estates? If they have not final dominion over our houses and chattels, how did they get it over our children and ourselves? They can raise armies, they can lay and collect taxes, for there it is written down in their charter—they may recruit, they may tax, but when you come to the power of seizing upon

all a man has and putting it into the public exchequer, or upon the man himself and carrying him off, they cannot do that, for their power is limited; and the State can, for its power, when not expressly limited, is unlimited. The State is our parent, the Union is our partnership, it is our Constitution, not our country. In the *Federalist*, No. 84, is the true doctrine put by Hamilton. He says the Constitution under consideration is merely intended to regulate general political interests; it is not intended for the regulation of personal and private concerns. This Federal Government is but a "particle of the divided being" of the State—the State still remains, and our bodies and estates, as Hamilton says, are in its keeping. Here is the key to the rights of the States, and put into our hands by not their best friend or strongest advocate. I do not mean that the Federal Government cannot take private property for public use, making just compensation, as they do when they make a road or build a bridge; but I mean that they cannot vote every man to belong to them, that they cannot take their possessions and apply them to meet the public exigences. I see nothing in the Federal power to raise armies, to lay taxes, to borrow money—I see nothing in the nature of the Federal compact, to persuade me that the States ever gave away this last control over their citizens. But this point has been settled, and by the highest authority. The Supreme Court of the United States has repeatedly recognized the *parens patriæ* right to be in the States—indeed I do not understand it has ever been doubted. In *Wheeler vs. Smith*, 9 Howard, 78, that court said:

"When this country achieved its independence, the prerogatives of the Crown devolved upon the people of the States; and this power still remains with them, except so far as they have delegated a portion of it to the Federal Government. The sovereign will is made known to us by legislative enactment. And to this we must look in our judicial action, instead of to the prerogatives of the Crown. The State, as a sovereign, is the *parens patriæ*."

In *Fontaine vs. Ravenel*, 17 Howard, 384, they repeated this. I have said that the militia power is part of the *parens patriæ* power. I say again I will admit, for all the purposes of the case before the Court, that the militia, so far as called to the field, may be regarded as taken away from the States and given over to the Union, to their entire temporary exclusion in the three cases provided for in the Constitution.

Where, then, do we stand? The question is, the right of the Federal Government to carry off citizens bodily, to make soldiers of them. The powers of the country are divided between the Union and the



State. The *parens patriæ* power is in the State. The power of recruiting armies is in both State and Union. And now the question remains, out of what power is derived, and where is vested this right of conscription? If it come out of the *parens patriæ* power, it is in the State alone, and the Government of the Union cannot exercise it—cannot constitutionally pass this law of the 3d March, 1863. And let me say, the learned counsel at this point has much need of his unlimited power, for he claims to take a course which, to be taken at all, must be unlimited—he claims to use an exhaustive process. His right, he says, is to take every man in the country between twenty and forty-five under the present law, and all the rest as soon as Congress chooses to say so; a right which, to exist, must be undivided and unlimited. Now, I want him to tell the Court how he finds his way—by what entrance—at what door he gets in; and, if he can get in, what room he finds there for the exercise of his exhaustive power. The State holds an army-raising power, it holds the *parens patriæ* power, it holds the militia power—which is parcel of it, except so far as the militia power has been given away under the fifteenth and sixteenth powers of Congress. What, then, are these armies, these “national forces,” which are composed of the entire population of the country? Under what proviso does he take them? Where does Congress, which is limited to eighteen powers, and has no others, get the power to come into Pennsylvania, and empty the State of her people? We will concede that the Federal Government could demand constitutionally every being of us as militia-men. That of the militia power we were content to give away as much as would authorize United States Provost-Marshals to come and take privates in the militia. But they are not doing that. If they took them as militia, their term of service would be limited and short, their place of service would be limited too, their officers would not be appointed at Washington. We would appoint them ourselves. Very well; it is plain that they are not calling forth the militia; that would not suit the purposes of Congress, and it is admitted that they are not seizing and carrying off men for any thing less than regular troops. They are taking them for three years, and probably they will not send them beyond the bounds of the United States; but they will, if they choose. If they can take them at all, they can take them to go where they like, and to keep them as long as they like—they can take them, as the Russian soldier is taken, for life, and to fight in remote parts of the world, in support of some alliance, offensive and defensive, as is intimated in the opinion of one of the learned Judges. Now, as this cannot be done under the militia power, the question is, can it be done under the army-raising power? I have

shown that the framers of the Constitution assured the people of the States, when they paused on its adoption, that there was no extreme power in it; and before I take my seat I will endeavor to show that this supposed right to strip a State of its inhabitants, to take whom they like, to turn the magistrates of this high tribunal into common soldiers, to carry off every functionary appointed to watch over the public safety—always excepting his Excellency the Governor—is extreme, and must needs be dangerous; that it is, in one word, a military despotism. In the mean time, and without the aid of that consideration, it is not easy to establish, in the absence of admitted premises, whether these five words, *to raise and support armies*, mean recruiting only, or recruiting and other means. Our reason may beat to and fro between these two points forever, if the question must be settled *a priori*. But it can be resolved by a process more simple. Here is the area of Pennsylvania; we have such an extent of territory, and so many inhabitants, so much food for powder, and so much room for Provost-Marshals. The recruiting power—if that be the meaning of the words *raise and support armies*—may be exercised within our limits by both the State and the United States; for both have the right to exercise it there,—but how can both exercise it, if it mean conscription? Both cannot have the whole population. The learned Judge has told us that, in 1814, Mr. Van Buren introduced a bill, which passed into a law of the Legislature of New York, by which an army of twelve thousand men were to be raised and made a present to the Federal authorities, and that a bill of the same kind, about the same time, passed the Senate of Pennsylvania, for raising an army which it does not appear they meant to make a present of to anybody. Now, if we had passed in February, 1863, a State law, dividing up our counties into military districts, and appointed a Provost-Marshal for each, with directions to take and carry away the population between the ages of twenty and forty-five, could the United States come into Pennsylvania a month after—in March, 1863—with their Provost-Marshals, too? The game differs from most games; it is a game which only one can play at. I will assume that Pennsylvania has no better right to her own flesh, to the bodies of her own inhabitants, to her legislators, her judges, her bishops, priests, and deacons, than the Federal power has; but her right is as good, I suppose. If the State passed the law, therefore, and took the men, surely the Federal authorities could not take them away from us. And, if the two enactments were passed the same day, and it were a race for us, both sets of Provost-Marshals starting at the same time, while I can understand that the Federal riders would be a little ahead since Congress has



taken possession, by what right I do not know, of all our railroads and telegraphs, yet our title would be as good as theirs: and I would like the learned gentleman to tell me into which army our people would have to go. It could hardly be that the first comer had the right, as when, to-day an Englishman, to-morrow a Spaniard, landed on our shores, and stretching out his arm and erecting his master's standard, called aloud, *I take possession of this continent for the King of Spain, I take this country back to the Pacific Ocean for the King of England!* No, sir; the central Government can turn us into a militia, but where is the power to turn us into regular armies? I make no point that the original power, being with the State, we are not to be told that in case of doubt how much we have given away, it would be a strange presumption that presumed in favor of a party to whom, however uncertain the terms of the grant, we never could have meant to part with what, being gone, would leave us no State at all; nothing but the shell of one. All I say is, here is a conflict of jurisdiction, and that never was meant. Whatever can be wrung out of the five words, read one way or read another, if the reading be a collision between State and Federal power, that reading must be dropped. We must find some other.

But we can go further. Not only is it impracticable for the State and the Federal Governments both to exercise the army-raising power in any other way than by recruiting, but it is certain that it is impracticable to exercise it by conscription, without trenching on the ultimate sovereign power over men and things which statesmen and judges have united to tell us never was parted with in favor of the Federal Government. It cannot be done without the aid of the *parens patriæ* power, which is the State's, which is not Federal. This is a fact, so to call it, which lies on the surface. It is not insisted that Congress, under the taxing power, could pass an act taking from us all our property, or taking all their property from the people between twenty and forty-five. They can tax but they cannot confiscate. Nobody supposed that, where there was no crime the Federal Government could do that. Very well, if they cannot take our estates, can they take our bodies? Let the act of 3d March, 1863, be read *estate* instead of *body*, and we bring the question to its true bearings. The act says, in the preamble and 1st section, that, whereas there is an insurrection and rebellion, and whereas it is the duty of the Government to put down insurrection and rebellion, and whereas a military force is required for the purpose, *therefore*, what! Why, therefore, they take our bodies and carry them off to the war. This is the right they claim. But let the act read that whereas there is an insurrection and rebellion, and it is the duty of the Government to put them down, and whereas it cannot be done

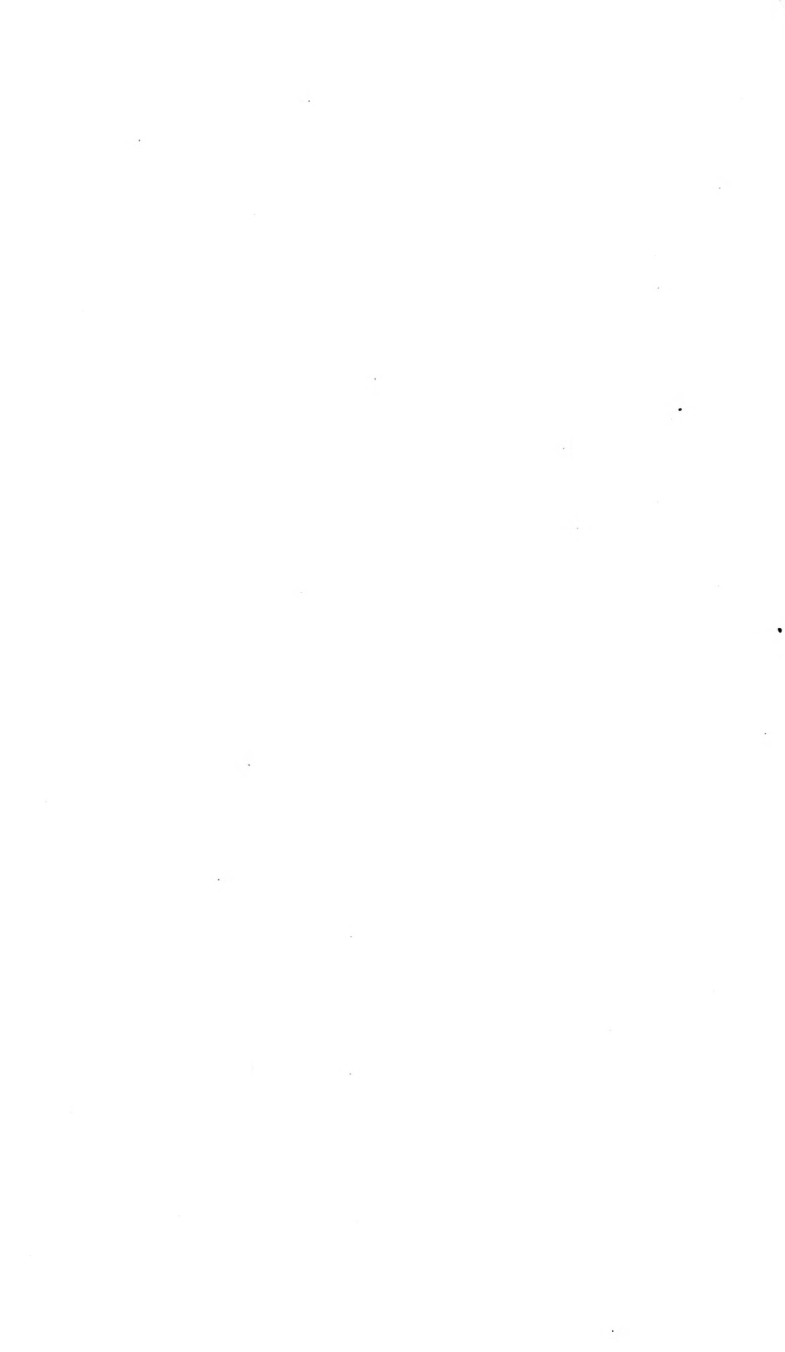
without money, *therefore* we are required to bring all our money and put it in the public exchequer. Could they do that? They claim the right to take all a man has. If this was the act would it be constitutional? Would not all of us cry out against its unconstitutionality? Would not everybody say this was the exercise of that intimate, ultimate, final right of sovereignty which is in the State alone? Would not the true and real character of the right attempted to be used be plain to the dullest perception? Would not *parens patriæ* stand unveiled? Would that be the constitutional exercise of the power to lay and collect taxes? Is this, then, the constitutional exercise of the power to raise armies? Or shall we be told that our pockets are more sacred than our persons? That those who can confiscate our bodies cannot touch our estates? This act of Congress, therefore, is unconstitutional because it passes the bounds of Federal power, and enters the field of those reserved rights which remain to the States. The conscription is no American institution; it is alien to our habits, it is hateful to the people, it is inconsistent with constitutional law, but the right to personal service is another thing, and the day may come when the last dollar is wanted for the Treasury, and the last man for the ranks. When that day comes we must have them; but it must be the State that takes them; the State which holds in its hand that authority, which is always in reserve, to be exercised when the safety of the Republic becomes the supreme law. It will never fail to be exercised when it ought to be. When divided up among the several States, it is not even dangerous, while on the contrary in Federal hands it is wholly incompatible with liberty.

Next, I submit that the law is unconstitutional because these words, *to raise and support armies*, cannot have been used by the framers of the Constitution, or understood by the States which adopted it, in a sense more indulgent to power than that in which the same language would have been understood in England. I submit it is unconstitutional, inasmuch as the Constitution of the United States, which in much of its framework is modelled on English institutions—which is written in the English language, by men emancipated but four years before from the status of English subjects; who had made a revolution which they declared to be, and really was, made because they had been divested of English rights, must be construed at least not below the standard of English freedom. It is full of expressions, to understand which we refer ourselves to British history. For the meaning of the term *habeas corpus*, as it stands in the Constitution of the United States, Chief-Justice Marshall said, in 4 Cranch, 94, he must refer himself to English authority. An American citizen, according to the Con-

stitution of the United States, cannot "be deprived of life, liberty, or property, without due process of law." The question came up before the same Court, what due process of law meant. How did the Court resolve it? Why, by turning to the Constitution of England, and the laws of the States before the formation of the Union. One of the powers of the President is to "grant reprieves and pardons for offences against the United States." In 18 Howard, 307, the question came up before the same high Court what these words meant, and again they turned to the same sources of light. The Constitution of the United States is unintelligible without referring ourselves at every turn to the Constitution of England. Look at it. What is a convention, trial by jury, freedom of speech, freedom of the press, the right of petition, the right to keep and bear arms, the right of security against unreasonable searches and seizures, what is probable cause, what is being twice put in jeopardy, what are cruel and unusual punishments—what are these, and, I may say without exaggeration, scores of the provisions of our Constitution, without a reference to that of England? I ask the question where we should be if we could not go to England for the meaning of them? For example, the Constitution of the United States provides for amendment of that instrument by conventions. A convention means, it has always been supposed, what we have in English example, a convention chosen by the people; but everybody knows that there are many other kinds of conventions. And where should we be if we were told, "Oh! your convention is not to be chosen by the people, the President will choose it—one-tenth of the people will do: they shall choose it—that is enough?" Would the framers of the Constitution have ventured to lay their work before us, had it not been well understood that the immunities they provided for our liberties were in no case of inferior stamp to those of England—that to call a convention meant less than the English convention of 1688—that to raise armies meant to raise them as they raise them in Russia? The history of our Revolution is the history of a quarrel for British liberties, which it was attempted to deprive us of. Persisting, as the mother country did, in that attempt, we broke into rebellion, which, being successful, was a revolution, and ended in our founding a Republic. The Constitution we made for that republic, unlike that of the mother country, was reduced to writing; that writing, for the most part, thanks to our ancestors, plain enough; but if it be anywhere in its language doubtful, it is to be construed to mean something at least as liberal, at least as free, at least as accommodating to the people and unaccommodating to power, as the British Constitution—as the British Constitution is in its like feature. What a farce

would be our Revolution, if it brought down our liberties—if it lowered us in the scale of freedom! If there be a clause in our Constitution which gives more power than the corresponding provision in England, all I can say is that it must be plainly set down: your unlimited power must not disguise itself in vague generalities. Where the American Legislature has more power than that of England we must know the reason why. I take it to be conclusive—I so submit it to the Court—against the constitutionality of Congress raising an army by conscription, that the British Parliament could not do it—there has been no time since 1688 when they could do it; nay, that there has been no point of English history at which it ever was done.

I offer next to the attention of the Court a decision, which, had it not been at the former argument unnoticed by the learned judges who dissented, I should say covered the case before them, and ruled the unconstitutionality of this act of Congress. I mean *Murray's Lessee vs. The Hoboken Land Company*, 18th Howard, 272. In the first Congress, by a resolution passed in September, 1789, I need not say there were proposed to the States, and that they ratified them in obedience to the wishes of the people, ten articles of amendment to the Constitution, one of which contains the provision that no person “be deprived of life, liberty, or property, without *due process of law*.” This court is to decide whether the process of Provost-Marshal is due process of law. Whether Congress can declare military process due process of law; whether due process of law is not something which Congress cannot make and unmake. The case in 18th Howard is this: There is an act of Congress of the 15th of May, 1820, entitled “An Act providing for the better Organization of the Treasury Department.” It provides for a lien on the lands of public debtors, and then a sale of them to the highest bidder, the Government taking out an execution against them, called a warrant of distress. These proceedings are authorized by no trial and judgment in a court of law, but by the Solicitor of the Treasury, who, the act of Congress says, may, having ascertained the default on the books of the Treasury, take this summary process. This is obviously not due process of law between citizen and citizen; and the Government having taken it against a defaulting collector of the customs, and his land being sold under it, the question came up whether a title passed by the sale. The question was the constitutionality of this distress warrant under the provision that no person shall be deprived of life, liberty, or property without due process of law. The opinion of the Court, which was delivered by Mr. Justice Curtis, lays down that this warrant was not *judicial* process. It was executive process; and from that point they consider it. They said “that the



warrant now in question is legal process is not denied. It was issued in conformity with an act of Congress, but was it due process of law? The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any process due process of law by its mere will. To what principles, then, are we to resort to ascertain whether this process enacted by Congress is due process? To this the answer must be twofold. We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." The Court also says: "The words due process of law were undoubtedly intended to convey the same meaning as the words, *by the law of the land*, in *Magna Charta*. Lord Coke, in his Commentary on those words (2 Institute, 50), says they mean due process of law." Having thus declared what due process of law must be, and that it was not for Congress to say what it was, that the article providing for the citizen due process of law was a restraint on Congress as well as on the executive and judiciary, and that to find what it was they must look to the Constitution itself, and if not found there, then to the law of England as we brought it over with us, and used it here, they proceed to inquire, having found nothing in the Constitution, whether in the law of England, as adopted by the States, there was any such summary proceeding against public defaulters. And they find, appearing, both by common and statute law, such process in England and in various States of the Union. The opinion occupies some twelve pages, and I need not trouble the Court with the details of its reasoning and investigation of authorities. Mr. Justice Curtis shows, by books ancient and modern, that the practice had prevailed in England for centuries, of proceeding against receivers of the revenue by a remedy as short and sudden as distress warrants under the act of Congress. He then cites statutes to the same effect in Massachusetts, Connecticut, New York, Pennsylvania, Virginia, and South Carolina, all prior to the adoption of the Federal Constitution, and at that date in full force. The Court then arrive at their conclusion thus: "Tested by common and statute

law of England prior to the emigration of our ancestors, and by the laws of many of the States at the time of the adoption of this amendment, the proceedings authorized by the act of 1820 cannot be denied to be due process of law, when applied to the ascertainment of a recovery of balances due to the Government from a collector of the customs, unless there exists in the Constitution some other provision which restrains Congress from authorizing such proceeding." It was due process, because it was sanctioned by the law of the land from which we derive our laws, and of the land in which we planted them.

Now I call for the law to sanction this process of the Provost-Marshals. Every invasion of the person or property of the citizen must be by due process of law, and no provision of the Constitution of the United States can be carried out but in that way. The constitutional prohibition is not confined to undue process of the courts of law. The legislative, the executive, and the judiciary, all have their process, but it must be due process or it is unconstitutional. When a citizen is arrested by order of one of the Houses of Congress, as has happened many times, the question of their power—their process—of the process they issue to make the arrest, and afterwards the process by which they punish the offence against them, is tested by a course of reasoning exactly similar to that of Mr. Justice Curtis. The proof of this will be found in the debates, reports, and proceedings in the case of General Houston, who assaulted Mr. Stansbury, a member of the House of Representatives from Ohio; in the case of Mr. Jarvis, who assaulted the private secretary of the President when carrying a message to the House of Representatives; in the case of individuals, if I mistake not, charged with uttering libellous matter against the Legislature, and in various cases to be found on the journals at any period of time from the organization of the Government to the present day. The process was held to be constitutional or unconstitutional, it was due or undue process, according to the precedents of our own time, and of that of our ancestors. So, I need not say, for the doctrine is there infinitely familiar, if the arrest is judicial; so if it be military. If the question were here, what was due process under the provisions of the Constitution for calling for the militia, the Provost-Marshal finding no solution of the question in the Constitution itself, would show that in England, from the time when the Danes threatened King Alfred, and in Pennsylvania, and in every State of the Union, from their earliest settlements, the militia have been called for at the public exigency, and if they did not come have been compelled to come. This compulsion they would show, by the practice and usage of our race and country, was due process of law. But what have they to show that compulsion is due



process under the provisions of the Constitution for raising armies? Let them show us that. Where will they look for it? Thank God, it is nowhere to be found! There may be one kind of process in judicial proceedings, between man and man, another in collecting taxes, another in the case of captures by land and water, another when we take private property for public use, another in calling forth the militia, another in raising armies; and all may be due process of law and constitutional; each may be capable of being supported as the process of the Solicitor of the Treasury was by the Supreme Court; but whichever of them cannot be thus reasoned upon is undue, is unconstitutional. For what is due process we look to our ancestors, to our liberties, to "the law of the land," as handed down from our fathers.

The Court said, at page 276, "due process of law" is the "*legem terre*" of *Magna Charta*; that Coke treated them as convertible terms; and it is remarkable that the second Institute of Coke, to which they refer, contains an apt illustration that these words cover military cases as well as civil. I read from page 53: "If a soldier after wages received or press money taken, doth absent himself or depart from the king's service, upon the certificate thereof of the captain into the Chancery, there lieth a writ to the king's sergeant-at-arms, if the party be vagrant and hideth himself, *ad capiendum*, &c. And this is *lex terre* by process of law, *pro defensione regis et regni*," &c.

If counsel ask, how can a conscription be carried through but by force, the answer is, he argues in a circle. He assumes the very point in question, that he has a right to a conscription. He must, as the Constitution is silent, test his right to raise armies in this manner by showing that it has been the usage and practice here and in England; then I admit the Provost-Marshal's force, like that of the Solicitor of the Treasury, becomes what in the absence of precedents it would not be, "due process of law." It is not the test of constitutionality that without these measures armies cannot be raised satisfactorily, or the public dues collected. It is the right of Congress to exercise their eighteen powers over the citizen, but it is the citizen's corresponding right that those powers be exercised in no other way than subject to his bill of rights, his right to due process of law, and the others.

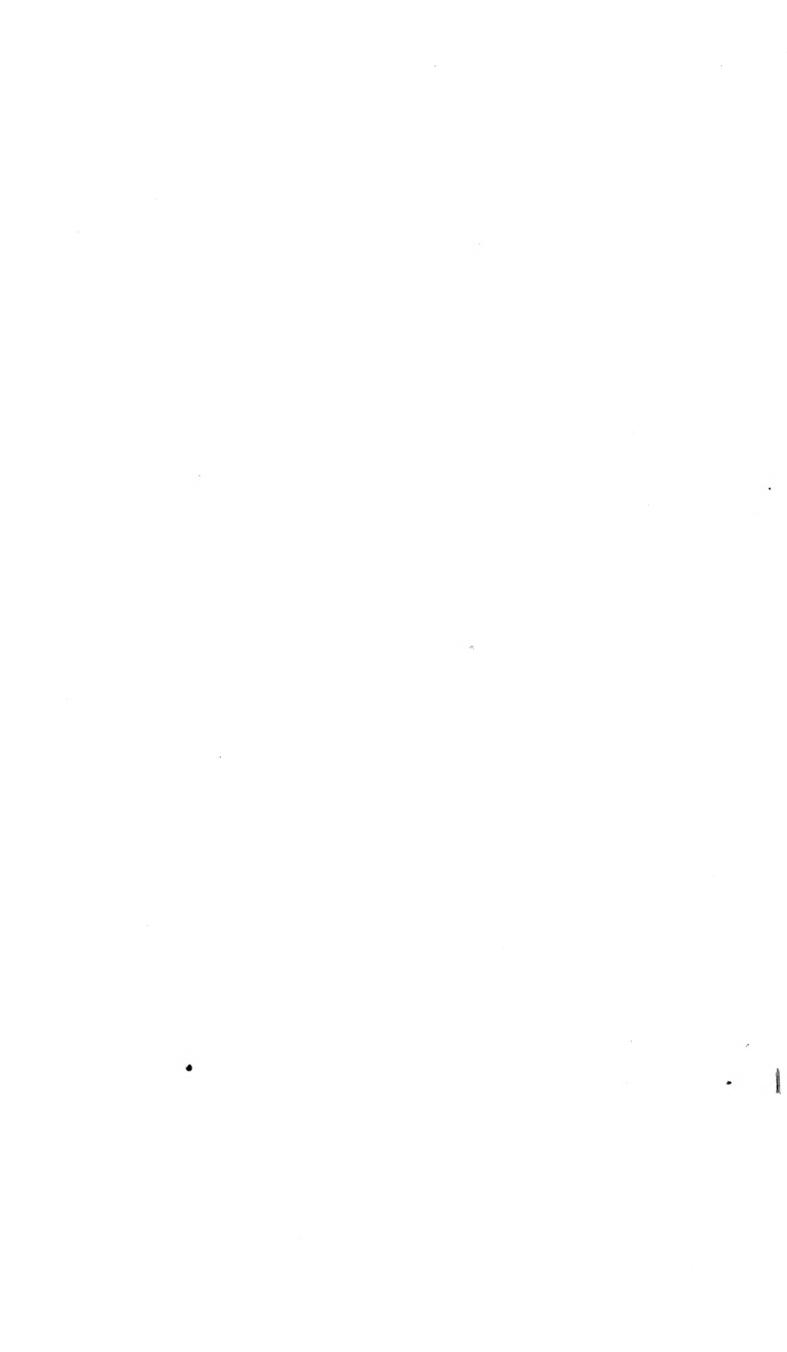
There is but one more view of this case. The two breakwaters provided by our ancestors against the tyranny of majorities, who like any other tyrants are capable of any sort of mischief, were the State power and the judicial. State power is gone: it has been strangled in the Federal embrace. Now let the Court look back, before they decide this military question at the condition to which in the absence of constitutional phlegm we have come; and then I ask where we will be when

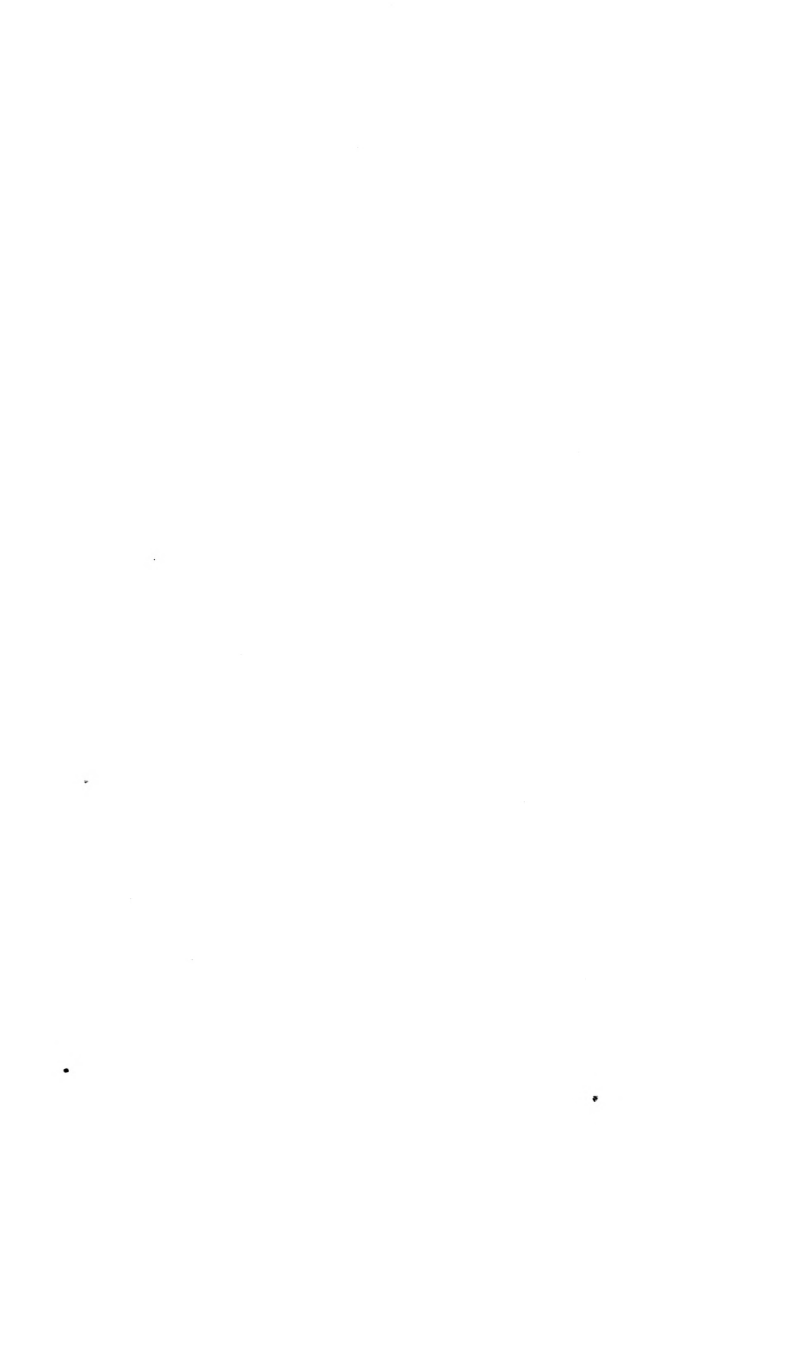
a military conscription gives the power to make this state of things permanent; for power never rusts for want of use; if Congress can raise armies by conscription at any time, they may do it at all times. The Conscription Act makes all able-bodied male citizens of the United States, and foreigners having declared their intention to become citizens, between the ages of twenty and forty-five years, the national forces, and as such they are liable to be called out for military service by the President. But how? For it is obvious that stringent measures must be resorted to. The country is divided into military districts, with a Provost-Marshal at the head of each; and the *Habeas Corpus* being suspended and recourse to civil justice thus cut off, they are authorized, having first drawn, in a sort of lottery, those liable to service, to seize and hold them till they can be sent forward to take their places in the ranks. The power thus given to each Provost-Marshal is despotic, or rather the power of the President is despotic, and he divides it up among so many deputy despots. To them is not given, by those names, legislative and judicial power. They cannot pass laws, hold an orphans' court, or try an action of ejectment; to them is given no right over persons of nineteen years of age or forty-six. Their right is limited to certain persons, and they have no right to touch property. But the right and the power are very different things. They have the power to take persons of nineteen and forty-six and call them twenty and forty-four, and no court of justice can review them. If to this Court it were made known to-day, that any President, Judge of the State, a man of sixty years of age, had been taken off the bench and was in the custody of a Provost-Marshal, handcuffed, to be sent off to Louisiana or Hilton Head, if he did not redeem himself by making to the Provost-Marshal a deed of his farm, you could not interfere. Nay, if it were the wife or daughter of the judge, you could not interfere if the Provost-Marshal said the woman was a man. This is the right because it is the power. Does anybody believe that such a power can fail in the end, and that end soon, to become a general despotism? We are told it is no argument against a power that it may be abused. I grant it is not a universal argument. But it is a good argument in a free country that it is all put into one man's hands. Republican institutions being assumed, it is not necessary to argue that power so placed will be abused. Whether abused or not, it must not be there. Judicial power is ousted and military power is put in its place, and so with legislative power. What laws could the Legislature of Pennsylvania pass which would avail against the Provost-Marshal? He draws a line round his district, and no State power can enter, legislative, executive, or judicial, nor any Federal power except that of his master, the President. This is not the future, it is the

present—the notorious present. You see in this very district a notice of the Provost-Marshal that anybody who pulls down his bills will be dealt with by military law. This is perhaps beginning a little fast, on the part of that gentleman, when it is considered that he is one of the defendants to these suits, and that his notice was put up after the Court had ordered an injunction against him; but it is no more than justice to say that, so his law must be executed at last, if it is to be executed at all. There can be no divided empire between civil and military rule, between the courts of law and the Provost-Marshal. If the military be not in strict subordination to the civil authority, the civil will be to the military. That is the meaning of the clause in our Bill of Rights. It is the expression of a home truth. If it is in the power of the President of the United States to point to as many as he pleases of the population of Pennsylvania and say, I withdraw those men from the keeping of your executive, legislative, and judiciary, and place them under the Articles of War, where are your liberties?

Sir, in the English law books we find much boast of English liberty, and well founded. They are a great and free people—great because they are free. Without their freedom they would be a very coarse-grained population. But when they go on to tell us they were always free, it is in their blood, in the Anglo-Saxon blood, as they call it, they are boasters and empty ones. Sir, did it never occur to you that the reason why the English are free, and the only one, is because they do not keep an army among them, because they have not soldiers to keep them under? When the feudal days ended, England being an island, and early a naval power, and not in constant fear of invasion, did not set up an army. The representative bodies of the Continent of Europe were as full of the spirit of encroachment on royal prerogative as ever the English parliaments were, and the blood of the Celtic and Romanic races is as liberty-loving as the Anglo-Saxon; but, unhappily, everywhere but in England there have been troops in pay from the time when the heads of fiefs ceased to follow the sovereign to the field. They were indispensable; indispensable, that is to say, according to the rules of modern policy, to those whose neighbors had only to cross a river or a tract of country to invade them. The last English armies kept on English soil before Cromwell's day, when the army brought England to their feet, were those which fought the wars of the Roses which ended with the accession of Henry VII. Henry VIII. did not keep in England three hundred soldiers; his children kept almost none; James almost none, Charles had almost none, or he would soon have put down his Parliament. The Parliament had an army before he had, and with it put him down. Down to the time when the civil war between King

Charles and his Parliament brought them one, there was no army in England. As soon as the civil war was over, and there was no longer army against army, the army trampled down liberty, the people became the slaves of Oliver Cromwell, the man who controlled the soldiers. Under the two succeeding monarchs, Charles and James, a small standing army had been raised amid the remonstrances of the people, and when James attempted the liberties of the kingdom, and the Revolution of 1688 was brought on, which firmly established their liberties on their present basis, the army refused to fight for him. But why did they refuse? It was not that they were unwilling to be led against liberty by their officers who, with most of the aristocracy and the whole English Church, were for power. They refused because, while, like the Church and like the aristocracy, they were willing to fight against liberty, like them, they would not support the Catholic religion, as, unfortunately for his cause, James wanted them to do. It was not that they loved liberty, but they hated the Bishop of Rome. They hated the church they had plundered. But for that the army and the Church, and the gentry with them, would have gone with the King all lengths, and there would have been no Bill of Rights, no change of the succession, no such dogma for the British Islands as that power springs from the people. The incessant railing of the English opposition, no matter what party was in, against standing armies, used to look to us here like demagoguism. It was unintelligible. But we understand it now. The last two years have taught us to understand it. Give our own Government this power to raise and support standing armies by a conscription, this power for which they are now contending, and we shall see in how much stead our Anglo-Saxon blood will stand us. England never asked for it, and if we get it, if it become one of our institutions, if it be found in our Constitution, another thing will be found soon after, which is that we must make our choice between military conscriptions and popular elections. The same country cannot hold them both. They are inconsistent—where the army is in force, the people are not. You cannot vote where there is an army. The proof of that lies no further off, than in the State of Delaware.





"TO WHOM IT MAY CONCERN."

Eleventh Ward Democratic Association, Philadelphia, Sept. 12, 1864.

MR. CHAIRMAN AND FELLOW-CITIZENS:—I propose, as the best use I can make of the honor you have done me in inviting me to address you this evening, to call your attention to a subject which, though it has been much discussed during the last two months, cannot be too often or too earnestly pressed upon the attention of the country. I mean the late offer of the South at Niagara and the rejection of it by Mr. Lincoln in his note *To whom it may concern*. Let me read that paper to you, gentlemen:

"EXECUTIVE MANSION, WASHINGTON, July 18, 1864.—*To whom it may concern*: Any proposition which embraces the restoration of peace, the integrity of the whole Union and the abandonment of Slavery, and which comes by and with the authority that can control the armies now at war against the United States, will be received and considered by the Executive Government of the United States, and will be met by liberal terms, on substantial and collateral points, and the bearer or bearers thereof shall have safe conduct both ways,

"ABRAHAM LINCOLN."

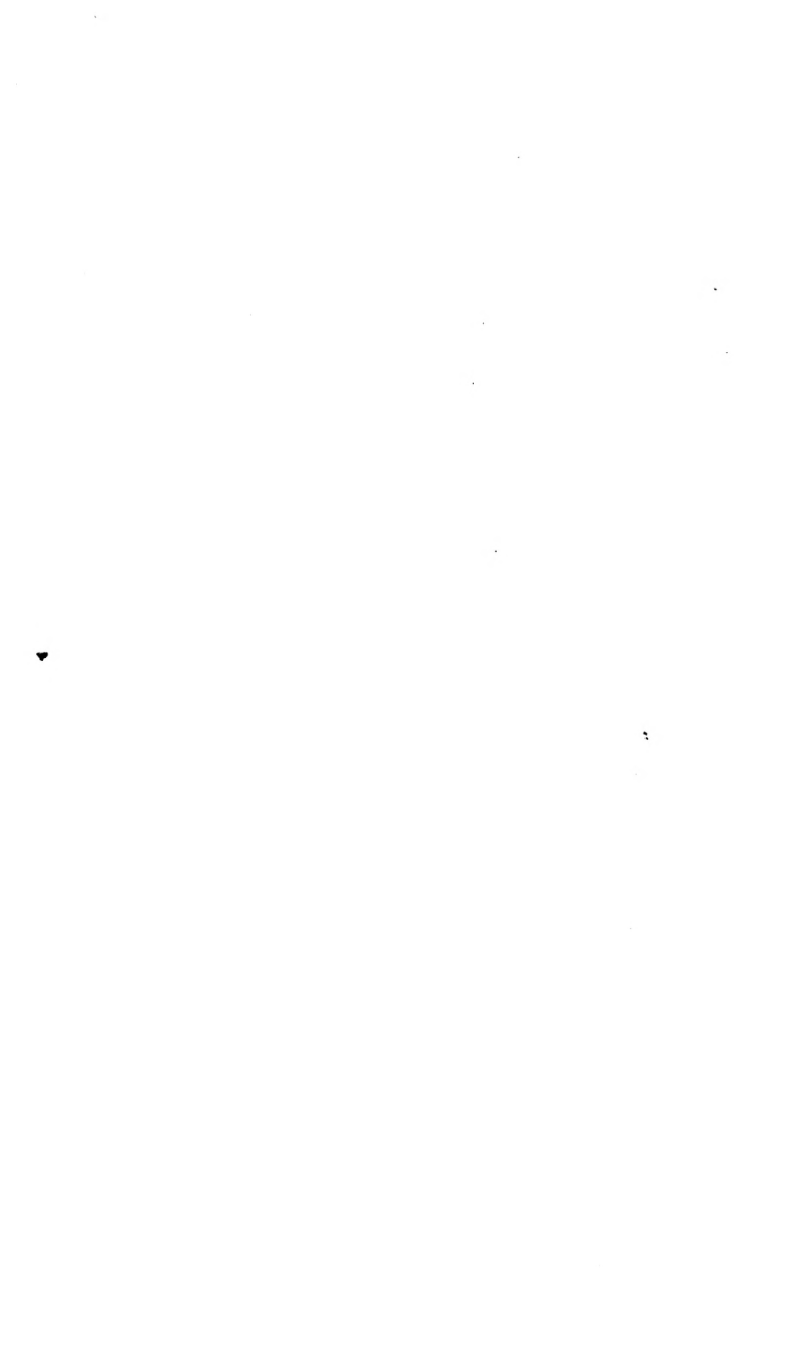
Here is a refusal of an offer which I will show was an offer to restore the Union. Here we have what the people of the United States ought to keep constantly before them at this supreme moment of what may prove to be the last stage of the Republic, for on your vote in October and November, depends our present existence as a free country; here is resolved, by Mr. Lincoln himself, the question on which, as I believe, the election is going to turn, the question which of the two contending parties, now about to poll their votes, is the party which will restore the country to Union and peace. No party which is for war at the hazard of the Union can obtain the vote of the country, nor can any party which for the sake of peace would give up the Union; and gentlemen strange as it would appear to those Republicans who by a course of reading of their own newspapers, have become persuaded that Mr. Lincoln alone shows the way to Union, and that we seek what they call *peace at any price*, peace at the price of the recognition of the Southern Confederacy, and no Union at all, I can conscientiously say there are not twenty citizens of Pennsylvania—there may not be ten whom I have ever heard express such a desire or such doctrine; and sure I am there is not a county in the Commonwealth, or a ward or a township in any one of its cities or counties, where a Democratic organization would print such a ticket or suffer it to be pasted on their walls. The Democratic party of Pennsylvania has, from time to time, met in convention,

and set forth their principles, and so have meetings in every county; and such a thought as the abandonment of the Union has never been breathed by one of them. The whole Democratic party of the country lately met at Chicago, and you have read their resolutions, you see their platform—it is Union, Union at all events, and Union with peace. You have the letter of their candidate accepting their resolutions, and expressing, in language the most energetic, his determination to preserve the Union at all hazards. Such is the record, as it is called, of the Democratic party. What have you on the other side? When Mr. Lincoln set off from Springfield on his journey to assume the reins of government at Washington, in the winter of 1860-'61, what did he say? At that time States were preparing to leave the Union, and before he was inaugurated six of them had seceded. Did he nail his flag to the mast? Gentlemen, he said, in his elegant way, he *would drive the machine as he found it!* That eminent follower and political friend of Mr. Lincoln, Mr. Banks, of Massachusetts, whom the Republican party still delights to honor, was run and elected as their candidate for Speaker of the House of Representatives more than seven years ago, in 1857—what did he say?—what was the platform on which he was elected? It was his immortal phrase, *Let the Union slide.* Mr. Wendell Phillips, who was very lately, and I presume yet is, a close and influential associate of Mr. Lincoln, does not exercise his right of suffrage in the case of Federal officers, because he will not so much as recognize the existence of the Union. Mr. Chase, the late Secretary of the Treasury, has been often said, and I never heard of its being denied, to have given his judgment at the beginning of the present troubles in favor of letting the South go, and dissolving the Union without more ado. Mr. Seward, the Secretary of State, was long the leader of the anti-Union party; in short, not to multiply facts which are as numerous as they are well authenticated and notorious, the active and immediate supporters of this Administration, which now asks at your hands a new lease of power as a Union party, was for years not only opposed to the Union, but scoffs at it, and now under the lead of these very men, their means of arriving at Union being, as they tell us, fire and sword, and nothing else unless it be confiscation and robbery, the masses of the Republican party are called on to put their faith in their candidate as the Union candidate. Should we re-elect Mr. Lincoln, when no doubt he would do just as he pleased, I have always supposed he would return to *driving the machine as he found it*, to the policy of Mr. Chase, Mr. Banks, Mr. Phillips, and the pure Abolitionists, that of ridding themselves of the Slave States altogether, by letting them go. But it is plain enough that if the point were settled to make peace and let the

South go, the question would remain how they are to go, and what they are to carry with them? Look at this for a moment. As soon as it is agreed the South are to go, you perceive they become a foreign country—in peace our friends, our enemies in war; and we would, of course, treat one another from the moment we agreed to part as foreign countries always do. Questions would at once arise between us—questions of boundaries, the question of the metropolis, the question of the mouth of the Mississippi, and other questions not less momentous, and our honor as well as our interests would be found to be bound up in them. Since the world began, no treaty of peace between contending nations ever was made on any other principle for its basis, varied very little indeed to meet the ends of mere right and justice, than the power of the strong, and the weakness of the weak. Denmark is a case in point of this sort, and a very recent one. We are not strong enough to conquer the South in Mr. Lincoln's sense, and would not be though the wish were gratified of that clerical gentleman who wanted every Southern white man, woman, and child butchered, for the four millions of blacks would remain, and they alone would be enough to defy subjugation in the sense in which it is now attempted, and in which, if the history of mankind is to be believed, it never can succeed; but that is a very different matter from the sort of conquest which influences a treaty, that balance of success in war which the more numerous people is like to have over the less numerous. What must be the consequence? Why, we of the North would be entitled to use, and would use, though we took for our guide the mildest and most charitable rules of the policy of nations, our power, which is two or three to one in population and a great deal more than that in wealth and resources over the South, to make good our title to an advantageous peace—a peace taking as much to ourselves, and leaving as little to the South, as might be, and that would be no peace at all, but new and fresh cause of war. The South, for the sake of secession, must either put up with being stripped of what would be indispensable to their nationality, or they must persuade us into a treaty such as no stronger country ever yet made with a weaker one. The North, for the sake of their peace, must give up, not their Union merely, but other things only next to the Union in value. Would either party consent to this? Of course not; and both parties, after determining to separate for the sake of peace, would determine to go on fighting for terms of peace. If we transport, in imagination, Mr. Lincoln and Mr. Davis to a table in the Department of State, and seat them there to make peace and divide the Union, let any man ask himself for example, what they would do with the Mississippi, a river which has its course through nothing but Southern terri-

tory all the way from the Ohio to the Gulf of Mexico, but the navigation of which no Northern man in his senses would for one moment think of surrendering, or, what would be as bad, leaving to treaty stipulation. It now belongs to the United States, as well as to the States through which it flows, and to hold it by treaty alone would be to hold it by no right at all but the pleasure of the other party, for a treaty right is a right abrogated according to the law of nations by the first cannon fired at us. What would they do with Chesapeake Bay, through which we were attacked by hostile fleets and armies both in the war of the Revolution and that of 1812, and which, to make safe against foreign aggression, even by a European power, yet more by a Southern Confederacy, we of the North must hold and fortify, and which we can neither fortify nor hold without holding at the same time the two States of Maryland and Virginia? What would the negotiators of separation do with the State of Missouri, a Slave State, and of Southern predilections, but lying in the midst of Northern States? What are to be our borders? Which of the parties to this treaty of peace shall have those portions of territory now held by Northern arms in the Southern States of Florida, South Carolina, Georgia, Alabama, Mississippi, North Carolina, Arkansas, and Louisiana? Would Mr. Lincoln muster his Latin and cry *possidetis uti*? No man can answer these questions, or twenty like them which might be put, and the senseless clamor of the followers of this Administration about Democrats who are for *peace at all price*, is fit only to impose on those who are so ignorant as not to think at all, or to frighten persons who have been foolish enough to embark their all in Mr. Chase's loans. The doctrine of *coercion*, as it is called, of a State by force of arms, may be right or wrong, sound or unsound; the Federal Convention struck it out of the draft of the Constitution as laid before them; Hamilton said, in 1788, in the New York Convention, that it was absurd and out of the question; many men of the present day differ with him, but there is no such doctrine at this time in question before the country. Does any man suppose that if the Democratic party should come into power they will say, on the peace question, "*Mr. Jefferson Davis, you have so many hundred thousand men under arms, and so have we, but we will settle all this business with you on State's rights principles and the Resolutions of '98?*" This might be if the millenium overtook us first. If things could go back to 1860, abolition in the North, secession in the South, and the question taking up arms, we would have the point before us. The point was before Mr. Lincoln himself when he delivered his inaugural address, and I would say he decided against it—perhaps, for through Mr. Lincoln's English his meaning does not always shine out as intelligibly as it does





in *To whom it may concern*—you would say he dodged it. But in April, 1861, the war broke out, and from that time to this month of September, 1864, the North and South have been at open war, with armies in the field of immense numbers, who have fought the bloodiest battles. The question of dividing the Union and letting the Southern States secede was, before the war began, forty months ago, a practical question to be considered and governed according to political doctrine and wise policy, if (I leave to you to say how far that is probable) Northern and Southern passion could have been subdued and a division of lands and goods made as it is between parties to a trading partnership. Such a dissolution would have been a peaceful dissolution, the parties taking this or that by the same rules which governed them when they sat together in Congress and appropriations and distributions of public money were made among different parts of our territory. But here is war upon us, and if it is not to end in Union, if we are to separate, why we are to separate not like partners, but—I was going to say like a band of robbers who have quarrelled among themselves—at least, I may say, as the German States separated after the Thirty Years' War, keeping and snatching from one another what they could, according to the "good old rule,"

—"the simple plan
That they should take who have the power,
And they should keep who can."

Let any Republican explain to you how there *can* be peace without Union, how there *can* be separation without war. Let him do that; till then, gentlemen, the question is simply this—shall Mr. Lincoln prevail as the Union candidate, when he is doing all he can to postpone Union? We want peace, for peace is happiness and liberty; he wants war, for war is armies, taxes, and power. If by some miracle the war could stop and the country be at peace to-morrow, Mr. Lincoln would not get, in November, two States to vote for him.

I come now, without further preliminary, to the consideration of Mr. Lincoln's letter *To whom it may concern*, the proof, as I regard it, so clear and strong that no man who looks at it can doubt that, while the mass of the Republican party, like ourselves, are for the Union, for what better could they ask? and most of them for peace and Union, their leaders, the controlling spirits of this Administration, are against any peace or any Union which, in restoring the Constitution, will bring back the Southern States to vote the Democratic ticket, and banish to an exile, worse than the Dry Tortugas, the men who have brought us to where we are to-day. Gentlemen, on the 12th July, 1864, came to the Clifton House, on the Canada side of the

River Niagara, Mr. Clay, of Alabama, a highly respectable man, and when he was a Senator of the United States, on terms of close political intimacy with Mr. Jefferson Davis, and now a Senator of the Southern Confederacy; and with him came Mr. Holcombe, of Virginia, lately, I understand, a professor in a college or university, and now a Representative in the Southern Congress. These gentlemen presented themselves to Mr. Greeley, a well-known friend of Mr. Lincoln, and Mr. Hay, his private Secretary, representing themselves to be, though not yet accredited ministers, persons in whose favor credentials to negotiate for peace would be furnished the moment they were informed from Washington that they were under safe conduct to proceed thither to enter upon their negotiation, and thence to Richmond, where necessarily they must report their proceedings. What had passed between them and Mr. Greeley and Mr. Hay before the 12th July, does not formally appear, though its character may easily be inferred from what Mr. Greeley said in his newspaper, that *peace was not as far off as people supposed*; but from the 12th July, to the rupture of all intercourse (the 18th July) by the note *To whom it may concern*, we have in writing what was said and done in eight letters which were exchanged among the parties. You will remember that Mr. Clay and Mr. Holcombe, though not yet invested with the dignity of ambassadors, were acting under the full responsibility of a function nearly approaching to that, and what they said and did, and especially what they put into writing, must be regarded by us and is entitled to be treated with the same consideration which we would give to the diplomatic notes or movements of Mr. Dayton or Mr. Adams, our ministers in Paris and London. Mr. Clay and Mr. Holcombe are, as individuals, as respectable as they, and their mission a thousand times more important. The envoys were beyond suspicion, their errand was the blessed errand of peace. So far is plain. But peace how, you will ask? Was it peace and Union?

The terms of peace had not been, we are to suppose, formally declared to Mr. Greeley and Mr. Hay, though from Mr. Greeley we seem to learn they were signified to them, for Mr. Clay and Mr. Holcombe, as yet, held no commission, but they had felt authorized to say, and did say in writing—I quote from their first letter to Mr. Greeley as much as this—that they were in the "confidential employment" of their Government; that they were "entirely familiar with its wishes and opinions" on the subject of "propositions looking to the establishment of peace;" that they or other persons on the safe conduct which they asked being furnished, would be immediately sent to Washington on the errand of peace, and in their note written after the *To whom it*



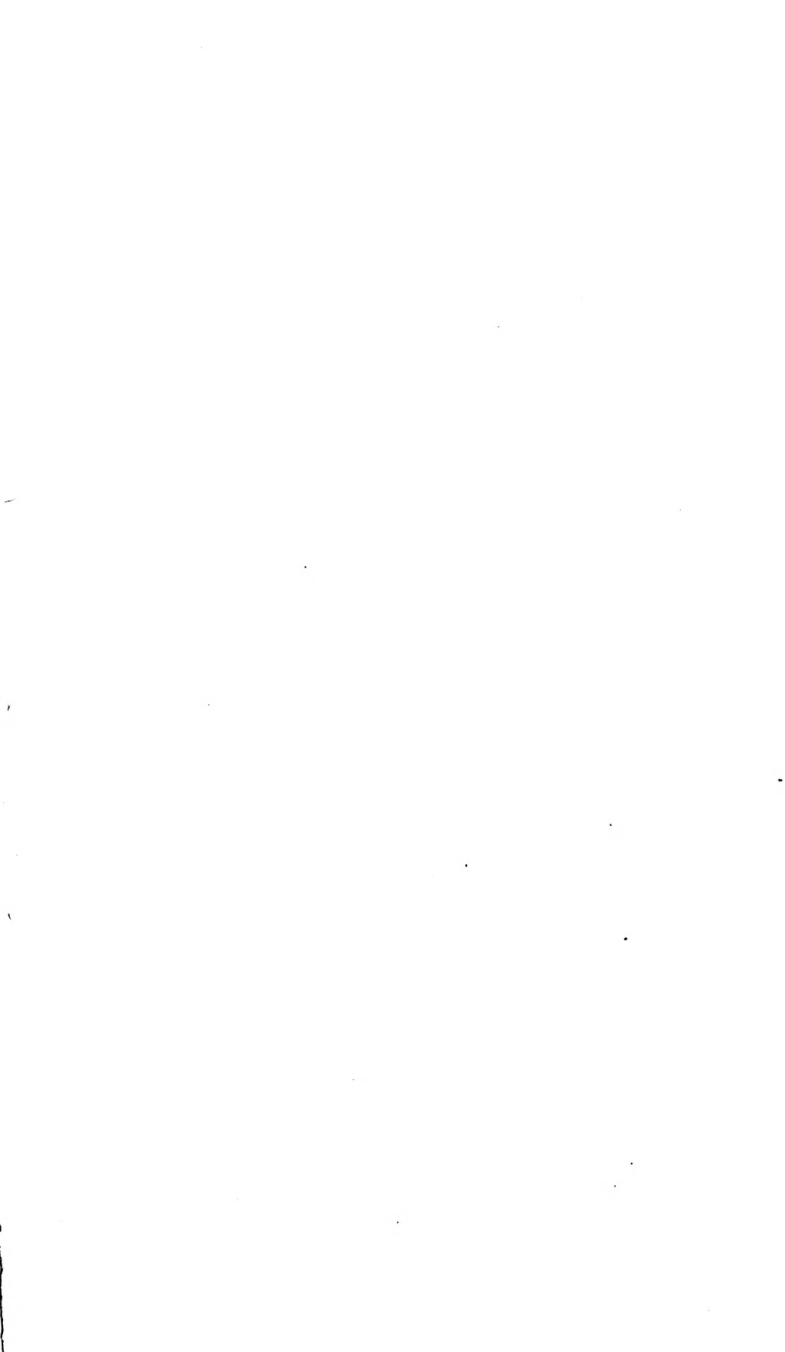
may concern, they declare emphatically that the peace to be proposed was "*a peace mutually just, honorable, and advantageous to the North and to the South.*" Mark the words, "mutually just, honorable, and advantageous." If these two men understood their native tongue when they used these words, and if they were not like ambassadors of two hundred years ago, whose office sometimes was to deal in nothing but falsehood, their peace was peace and reconstruction. Peace to be mutually just, honorable, and advantageous, could not be peace by which the North surrendered the whole object with which the war was begun. Nothing could be more false than an assertion that such a peace could be just to the North, or honorable to the North, or advantageous to the North. Be State rights and the right of secession what they may, such a peace, after three years of flagrant war, would be disgraceful to the North, and ruinous to the whole country, North and South, too. The language used by Mr. Clay and Mr. Holcombe, could have no application to such a peace. If they so used it, they dealt in the meanest fraud, in direct and deliberate falsehood. That is improbable, but that is not all. The proof what the object of these gentlemen was, the proof of what they meant by what they said, the proof that Mr. Lincoln is against the Union, the proof that he rejected overtures for peace and the restoration of the Union, does not rest on the solution of the meaning of words, or the frail tenne of the integrity of individuals. It rests on evidence of the highest kind, and which in courts of justice, as well as in the whole business of life, is everywhere regarded as perfect, because it is evidence which cannot deceive. If you have the oath of a witness to a fact, no matter who he be, you may be deceived—he may himself be deceived, or he may be deceiving you; but tell me which way that man's interests lie, and I will tell you what the fact is. I will construe his words by the drift of his interests. I will presume that he follows the rule of the human heart and does not by his words betray his interests. If these persons asked to go to Washington to treat for peace, that peace could not be peace and separation, because to offer such terms at this juncture would be contrary to the interests of the South to such a degree as to make it incredible that so extreme an indiscretion was committed by persons having the control of great concerns. Here is the Presidential election approaching, and the North is divided between two parties—one for the immediate putting down of the South by force of arms, the emancipation of their slaves, and the pursuit against their whole population of measures of military rigor, and, so they say, to get the Union back; the other for pausing in our hostilities and calling on the South to go into consultation with us, in order to an amicable adjustment of our difficulties, and so restore the

Union. Does anybody doubt that in the South they must look anxiously to the success, at this election, of the Democratic ticket? I suppose not; I suppose no man's logic could lead him to such a conclusion as that the South would send Mr. Clay and Mr. Holcombe to Washington, to insist on terms of peace, which, as soon as the country came to hear of them, would settle in the way in which such news must settle in one moment the question between the contending parties in the North, for where would the party be whose programme is an amicable settlement, in order to the Union, when the South, through the mouth of their ambassadors, had solemnly said they would make no amicable settlement, they never would reunite with us at all; all that Mr. Lincoln would have to do would be to publish to the world the Southern offer, and there would be an end of the question which divides the North. If the way to restore the Union is not negotiation, our doctrine is false doctrine. To go to Washington to offer separation would have been too great a mistake, and there is nothing left to believe but that those gentlemen, when they got there, would have offered promptly reconstruction. Union or disunion must be the first word uttered; there could be no mincing it, no postponement of it, no dodging of that question; if the negotiation must be for separation, the interview of the Southern Commissioners with the Secretary of State of the United States could not last a quarter of an hour. A "To whom it may concern" would have followed, and not without reason, upon the instant.

If, then, Mr. Clay and Mr. Holcombe's going to Washington expressly to give four years more of power to Mr. Lincoln, the proclaimed enemy of peace with the South, except on such terms, I mean that of parting with all their property, as no people ever yet submitted to, be a measure of madness—if such a step be contrary to all rule and reason which governs the actions of men, I say it is in proof, in the best and clearest of proof, that when they asked a safe conduct to Washington it was to offer reconstruction. But there is said to be counter proof from Richmond—I speak of the mission of Mr. Jaquess and Mr. Gilmore, who, in the same month of July, 1864, by means of a military pass and a card from Mr. Lincoln requesting that they might be sent on to "the Confederacy," as the card expressed it, procured an interview with Mr. Davis and Mr. Benjamin, which ended in their returning to give an account of their mission, which you have seen published, like that of Mr. Clay and Mr. Holcombe, in all the newspapers.

Mr. Lincoln authorized them, they said in this publication, to tell Mr. Davis, and they did so, that if the South would give up all their slaves they might return to the Union and receive a pardon. To this they say, Mr. Davis answered, declining, and protesting that they would





maintain their independence. What other answer could be made to such a proposal? Mr. Lincoln's terms were exactly those of the barbarian, when he thought the Romans lay at his mercy. "What," said they, "*do you mean to leave us?*" "*Your lives!*" was the answer. But Mr. Davis has given his own statement of what passed, in a very formal paper of Mr. Benjamin, his Secretary of State, dated the 25th August, and I look upon it as warranting all I have said of the mission of Mr. Clay and Mr. Holcombe. They had asked safe conduct to enter hostile territory, and initiate a negotiation "the most momentous"—such is their language—"ever submitted to human statesmanship." If there could be the least doubt of these persons, if what they did and offered to do was against the stomach of the Southern-sense, their presumption was boundless indeed, and amounted to an extravagance of indiscretion well deserving the severest chastisement, if indeed their government was to notice such impertinence at all; for you will observe that the object of Mr. Benjamin's paper was to dissipate the impression supposed to be made on the public mind by the statements published by Mr. Jaquess and Mr. Gilmore, and Mr. Clay and Mr. Holcombe's proceedings were not in question in any manner or need not be. Now, what says Mr. Benjamin? You will find at the conclusion of his paper, these words:

"You have, no doubt, seen in the Northern papers an account of another conference on the subject of peace, which took place in Canada at or about the same date, between Messrs. C. C. Clay and J. P. Holcombe, Confederate citizens of the highest character and position, and Mr. Horace Greeley, of New York, acting with authority of President Lincoln. It is deemed not improper to inform you that Messrs. Clay and Holcombe, although enjoying in an eminent degree the confidence and esteem of the President, were strictly accurate in their statement that they were without any authority from this Government to treat with that of the United States on any subject whatever. We had no knowledge of their conference with Mr. Greeley, nor of their proposed visit to Washington, till we saw the newspaper publications."

What does this mean? What is the meaning of saying that these persons, who had volunteered to take on themselves so vast a responsibility, enjoyed in "an eminent degree the confidence and esteem of the President?" Why should Mr. Davis, when they had no authority to treat, and when of their "conference with Mr. Greeley," and "their proposed visit to Washington" to enter upon a treaty, he knew nothing till he "saw the newspaper publications," go out of his way to use this language towards men, who, if what they did was unexpected or unwelcome, as well as unauthorized, were, of all blunderers, the most stupid and the most impertinent? Is this the language of an offended Government, the language of authority which has been trifled with,

which has been falsified and misrepresented by two silly interlopers? Take into account that no man, either in public or private life, commits himself to his proposition until the opposite party is prepared to consider the case, and I do not know what you would have more closely resembling, in diplomatic acceptation, an out and out assent to Mr. Clay's and Mr. Holcombe's declaration that they were "entirely familiar" with "the wishes and opinions" of Mr. Davis on the subject of peace, and that as soon as the safe conduct was forthcoming, Mr. Davis would send them to Washington to negotiate "a peace mutually just, honorable, and advantageous to the North and to the South." These become his own words, the words of Mr. Davis, which before were those of Mr. Clay and Mr. Holcombe only. Recollect that when Mr. Benjamin used the language I have given you, he wrote with the publication made by Mr. Clay and Mr. Holcombe of their letters containing the statement of what they had said and done, before him. Here is Mr. Jefferson Davis closer to reconstruction than Mr. Abraham Lincoln was ever known to be, or ever will be, so long as he is in their keeping, and can be comfortably lodged, fed and clothed by the Abolitionists. With this in no respect conflict those parts of Mr. Benjamin's paper, in which he refers to the late manifesto of the Southern Congress, and to what Colonel Ould had said, that it was useless to come to Richmond to talk of peace on any other terms than the recognized independence of the Confederacy. This "recognized independence" is a phrase easily construed, it means the point of honor—it means State Rights as understood in the South and as contended for, I may tell you—contended for wrongly, as I think; and as I suppose you think, but still contended for, at different periods of our history, by nearly every State of the Union, more particularly by the New England States, during the war of 1812, to judge for itself and redress its own wrongs when a difference arose between the Federal Government and one of its members—a point, no obstacle at all to peace and Union, and which we have yielded each time we have sent a flag of truce to the South, or exchanged prisoners with them, or treated them as belligerents, or dealt with them in any of the ways recognizing their independent existence, to which we have resorted so often since the war began. Before the South can return to the Union, must they swear to abandon the Resolutions of '98? Shall negotiations for peace with the South be barred, and dirty water thrown out of the window at them, because when they approach us they begin by asking what, whether it be too much or too little, has been the doctrine of every one of the shreds and patches of party which follow Mr. Lincoln, the old Federalists not excepted? Let Mr. Lincoln receive the Southern Commissioners, and we shall see what



there is to differ about; let us know how much they ask of State rights more than we are willing to give. I do not ask every Republican to be as firmly convinced as I am that these two gentlemen who applied to Mr. Greeley and Mr. Hay to procure them a safe conduct to Washington, had they been received, and all idle points of ceremony as to whether the Confederacy is or is not—waived as they are waived when General Grant addresses a letter to General Lee, styling him C. S. A., they would be at this day engaged in the work of reconstructing the Union, or have satisfied us that under Mr. Lincoln's rule it never can be reconstructed; but I do ask any man of them who does not want war for the sake of a war contract, to believe that those Commissioners ought to have been heard, ought to have been safe conducted to Washington, and been received to treat of peace, and I say that if they ought to have been received, and not turned away, the burden lies upon the friends and supporters of the illustrious signer of *To whom it may concern* to show that Mr. Clay and Mr. Holcombe, by "a peace mutually just, honorable, and advantageous to the North and to the South," meant a treaty to us unjust, dishonorable, and disadvantageous, a treaty of separation. It is not necessary to establish it as a fact that the South desire to reconstruct the Union. It is enough to show, to condemn Mr. Lincoln, that he has slammed the door in their faces when they came to say so. He must hear them, he must open the negotiation with them, or we will slam the door in his face in November. It is idle to tell us that these people are bent on separation, that the Richmond and Charleston newspapers say so, and Southern men and women breathe nothing but defiance—they could not breathe at all, if they did not; for, treated with vindictive brutality, as they are, by this Abolition Government, whose barbarous course towards them is dictated by an old party grudge, which, after long festering, has now broken out in open hatred and revenge, they would not have, nor would they deserve to have, to back them in their contest, either politicians, soldiers, or a united country, if they said less, or in the least lowered their key, or moderated their tone. To the cry for their blood they can make no tame answer. You remember what Chatham said in 1777, in his place in Parliament, during the war between his country and the Colonies, as they called us, after denouncing what he called "the rapine and plunder" of America, by British troops. "If I were an American," he went on—"If I were an American, as I am an Englishman, while a foreign troop was landed in my country, I never would lay down my arms—never—never—never." If in this unhappy quarrel, we of the North were the invaded party, and were called upon to surrender or die, who is there

among us who would be so vile as to inquire whether we were right or wrong when the dispute began; who is there who would not resist to the last gasp, and what Northern man is there to-day who would not feel ashamed for his blood, if the South answered to rapine and plunder by throwing down their arms, and submitting? Gentlemen, you and I are Northern men, not Southern men, and if, which God forbid, this base party, which has got us down, and now struggles to keep us under, should succeed, and re-electing Mr. Lincoln, proceed to divide the Union (as they would if they could, to give themselves rest to enjoy their plunder), the Abolitionists would be entitled to demand that we look at the inhabitants of the South with not more kindness than we do at those of Canada, or of Mexico; but till then, armed to the teeth as they are, and fighting us, they are our brothers, and we, of the Democratic faith, will continue to offer to their ambassadors our outstretched arms. But not so Mr. Lincoln, and he is our master,—we are his people, a people who used to be free, but are now only loyal. We take oaths of allegiance, and *he* has an escort of dragoons. Gentlemen, if you want to reconstruct you must change your rulers, for Mr. Lincoln knows that if, instead of insulting the Southern messengers with *To whom it may concern*, he had opened a negotiation with them—or at least those know who manage this ugly puppet, who pull him by the skirts, and twitch him by the sleeves—they know that to open a negotiation with the South, would be, if not to restore the Union, at least to show that the Democratic party could do it, and that would be a very bad card for the election day.

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—"the simple plan
That they should take who have the power,
And they should keep who can."

Let any Republican explain to you how there *can* be peace without Union, how there *can* be separation without war. Let him do that; till then, gentlemen, the question is simply this—shall Mr. Lincoln prevail as the Union candidate, when he is doing all he can to postpone Union? We want peace, for peace is happiness and liberty; he wants war, for war is armies, taxes, and power. If by some miracle the war could stop and the country be at peace to-morrow, Mr. Lincoln would not get, in November, two States to vote for him.

I come now, without further preliminary, to the consideration of Mr. Lincoln's letter *To whom it may concern*, the proof, as I regard it, so clear and strong that no man who looks at it can doubt that, while the mass of the Republican party, like ourselves, are for the Union, for what better could they ask? and most of them for peace and Union, their leaders, the controlling spirits of this Administration, are against any peace or any Union which, in restoring the Constitution, will bring back the Southern States to vote the Democratic ticket, and banish to an exile, worse than the Dry Tortugas, the men who have brought us to where we are to-day. Gentlemen, on the 12th July, 1864, came to the Clifton House, on the Canada side of the

River Niagara, Mr. Clay, of Alabama, a highly respectable man, and when he was a Senator of the United States, on terms of close political intimacy with Mr. Jefferson Davis, and now a Senator of the Southern Confederacy; and with him came Mr. Holcombe, of Virginia, lately, I understand, a professor in a college or university, and now a Representative in the Southern Congress. These gentlemen presented themselves to Mr. Greeley, a well-known friend of Mr. Lincoln, and Mr. Hay, his private Secretary, representing themselves to be, though not yet accredited ministers, persons in whose favor credentials to negotiate for peace would be furnished the moment they were informed from Washington that they were under safe conduct to proceed thither to enter upon their negotiation, and thence to Richmond, where necessarily they must report their proceedings. What had passed between them and Mr. Greeley and Mr. Hay before the 12th July, does not formally appear, though its character may easily be inferred from what Mr. Greeley said in his newspaper, that *peace was not as far off as people supposed*; but from the 12th July, to the rupture of all intercourse (the 18th July) by the note *To whom it may concern*, we have in writing what was said and done in eight letters which were exchanged among the parties. You will remember that Mr. Clay and Mr. Holcombe, though not yet invested with the dignity of ambassadors, were acting under the full responsibility of a function nearly approaching to that, and what they said and did, and especially what they put into writing, must be regarded by us and is entitled to be treated with the same consideration which we would give to the diplomatic notes or movements of Mr. Dayton or Mr. Adams, our ministers in Paris and London. Mr. Clay and Mr. Holcombe are, as individuals, as respectable as they, and their mission a thousand times more important. The envoys were beyond suspicion, their errand was the blessed errand of peace. So far is plain. But peace how, you will ask? Was it peace and Union?

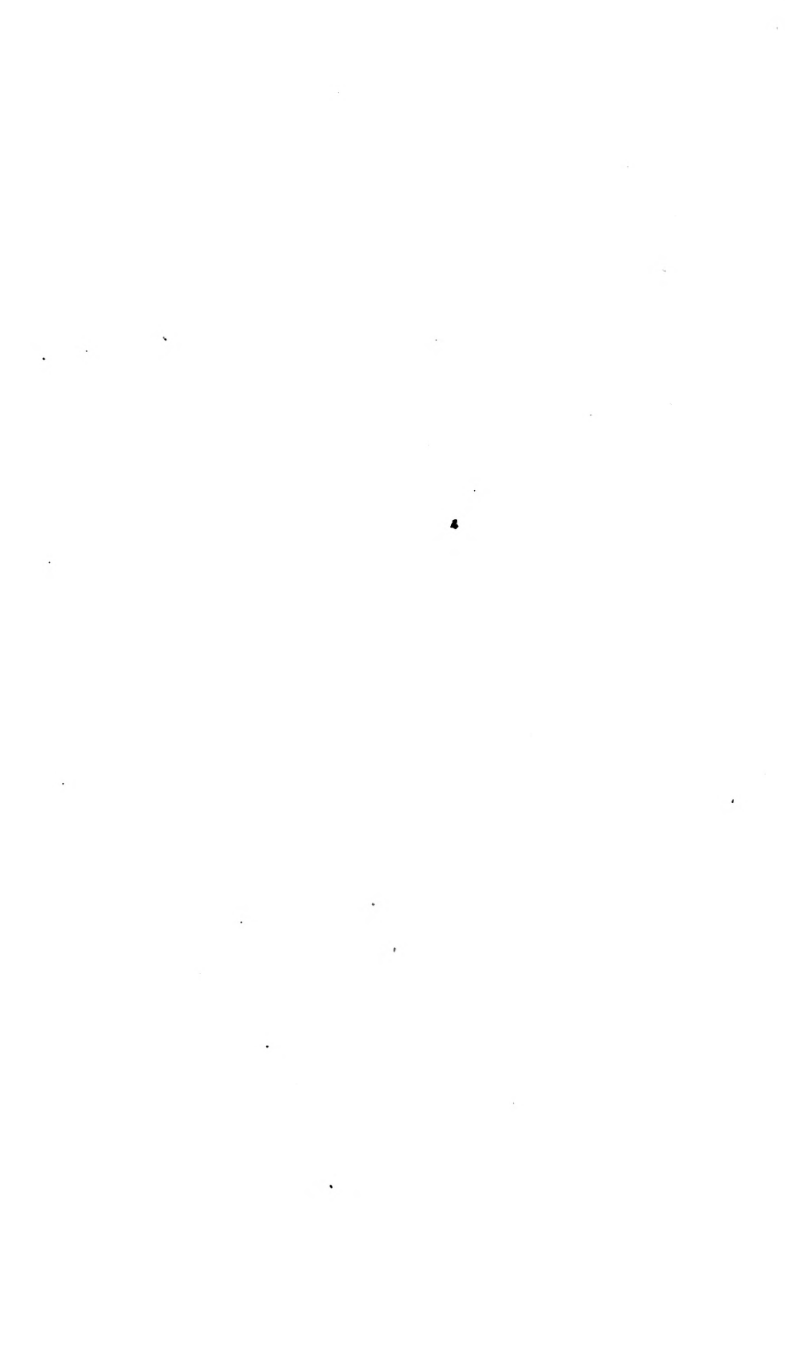
The terms of peace had not been, we are to suppose, formally declared to Mr. Greeley and Mr. Hay, though from Mr. Greeley we seem to learn they were signified to them, for Mr. Clay and Mr. Holcombe, as yet, held no commission, but they had felt authorized to say, and did say in writing—I quote from their first letter to Mr. Greeley as much as this—that they were in the “confidential employment” of their Government; that they were “entirely familiar with its wishes and opinions” on the subject of “propositions looking to the establishment of peace;” that they or other persons on the safe conduct which they asked being furnished, would be immediately sent to Washington on the errand of peace, and in their note written after the *To whom it*

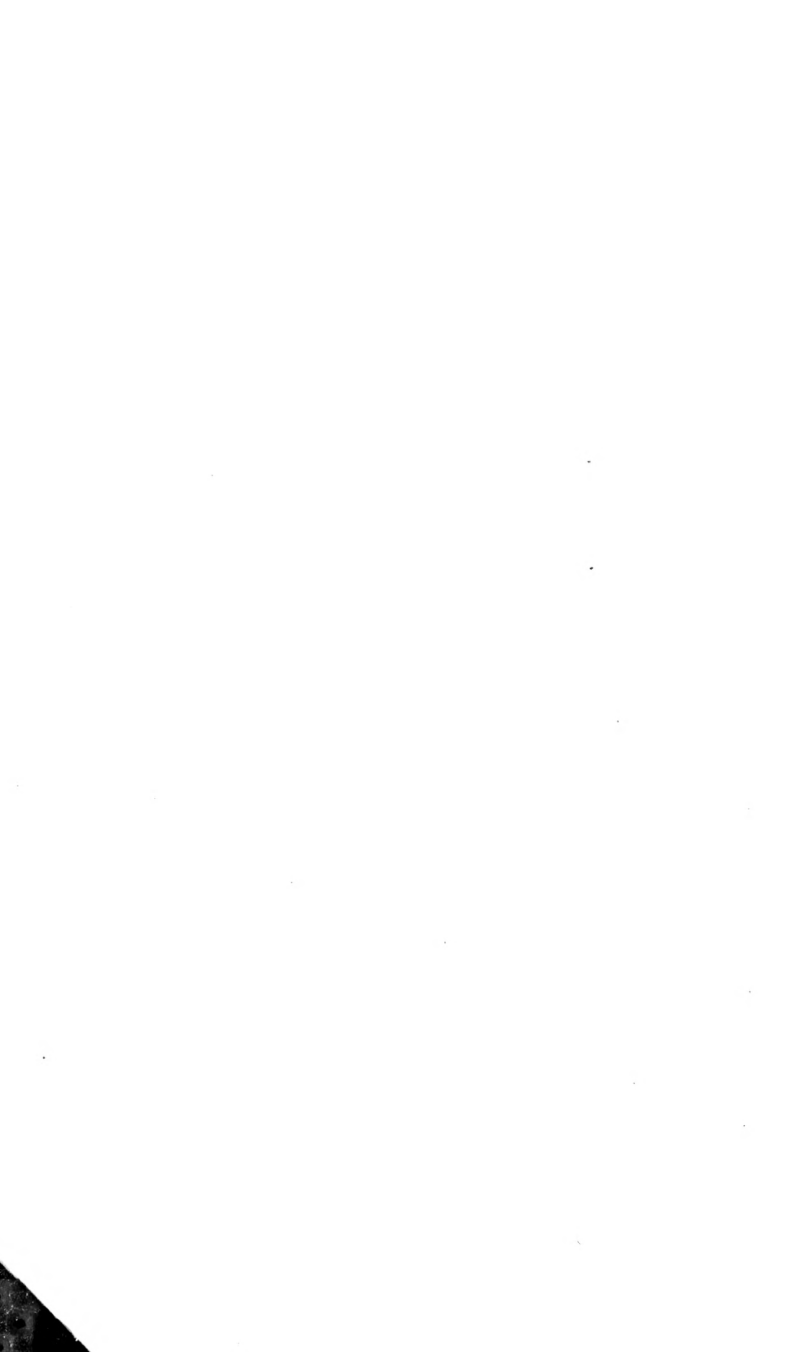
may concern, they declare emphatically that the peace to be proposed was "*a peace mutually just, honorable, and advantageous to the North and to the South.*" Mark the words, "mutually just, honorable, and advantageous." If these two men understood their native tongue when they used these words, and if they were not like ambassadors of two hundred years ago, whose office sometimes was to deal in nothing but falsehood, their peace was peace and reconstruction. Peace to be mutually just, honorable, and advantageous, could not be peace by which the North surrendered the whole object with which the war was begun. Nothing could be more false than an assertion that such a peace could be just to the North, or honorable to the North, or advantageous to the North. Be State rights and the right of secession what they may, such a peace, after three years of flagrant war, would be disgraceful to the North, and ruinous to the whole country, North and South, too. The language used by Mr. Clay and Mr. Holcombe, could have no application to such a peace. If they so used it, they dealt in the meanest fraud, in direct and deliberate falsehood. That is improbable, but that is not all. The proof what the object of these gentlemen was, the proof of what they meant by what they said, the proof that Mr. Lincoln is against the Union, the proof that he rejected overtures for peace and the restoration of the Union, does not rest on the solution of the meaning of words, or the frailty of the integrity of individuals. It rests on evidence of the highest kind, and which in courts of justice, as well as in the whole business of life, is everywhere regarded as perfect, because it is evidence which cannot deceive. If you have the oath of a witness to a fact, no matter who he be, you may be deceived—he may himself be deceived, or he may be deceiving you; but tell me which way that man's interests lie, and I will tell you what the fact is. I will construe his words by the drift of his interests. I will presume that he follows the rule of the human heart and does not by his words betray his interests. If these persons asked to go to Washington to treat for peace, that peace could not be peace and separation, because to offer such terms at this juncture would be contrary to the interests of the South to such a degree as to make it incredible that so extreme an indiscretion was committed by persons having the control of great concerns. Here is the Presidential election approaching, and the North is divided between two parties—one for the immediate putting down of the South by force of arms, the emancipation of their slaves, and the pursuit against their whole population of measures of military rigor, and, so they say, to get the Union back; the other for pausing in our hostilities and calling on the South to go into consultation with us, in order to an amicable adjustment of our difficulties, and so restore the

Union. Does anybody doubt that in the South they must look anxiously to the success, at this election, of the Democratic ticket? I suppose not; I suppose no man's logic could lead him to such a conclusion as that the South would send Mr. Clay and Mr. Holcombe to Washington, to insist on terms of peace, which, as soon as the country came to hear of them, would settle in the way in which such news must settle in one moment the question between the contending parties in the North, for where would the party be whose programme is an amicable settlement, in order to the Union, when the South, through the mouth of their ambassadors, had solemnly said they would make no amicable settlement, they never would reunite with us at all; all that Mr. Lincoln would have to do would be to publish to the world the Southern offer, and there would be an end of the question which divides the North. If the way to restore the Union is not negotiation, our doctrine is false doctrine. To go to Washington to offer separation would have been too great a mistake, and there is nothing left to believe but that those gentlemen, when they got there, would have offered promptly reconstruction. Union or disunion must be the first word uttered; there could be no mincing it, no postponement of it, no dodging of that question; if the negotiation must be for separation, the interview of the Southern Commissioners with the Secretary of State of the United States could not last a quarter of an hour. A “To whom it may concern” would have followed, and not without reason, upon the instant.

If, then, Mr. Clay and Mr. Holcombe's going to Washington expressly to give four years more of power to Mr. Lincoln, the proclaimed enemy of peace with the South, except on such terms, I mean that of parting with all their property, as no people ever yet submitted to, be a measure of madness—if such a step be contrary to all rule and reason which governs the actions of men, I say it is in proof, in the best and clearest of proof, that when they asked a safe conduct to Washington it was to offer reconstruction. But there is said to be counter proof from Richmond—I speak of the mission of Mr. Jaquess and Mr. Gilmore, who, in the same month of July, 1864, by means of a military pass and a card from Mr. Lincoln requesting that they might be sent on to “the Confederacy,” as the card expressed it, procured an interview with Mr. Davis and Mr. Benjamin, which ended in their returning to give an account of their mission, which you have seen published, like that of Mr. Clay and Mr. Holcombe, in all the newspapers.

Mr. Lincoln authorized them, they said in this publication, to tell Mr. Davis, and they did so, that if the South would give up all their slaves they might return to the Union and receive a pardon. To this they say, Mr. Davis answered, declining, and protesting that they would





maintain their independence. What other answer could be made to such a proposal? Mr. Lincoln's terms were exactly those of the barbarian, when he thought the Romans lay at his mercy. "What," said they, "*do you mean to leave us?*" "*Your lives!*" was the answer. But Mr. Davis has given his own statement of what passed, in a very formal paper of Mr. Benjamin, his Secretary of State, dated the 25th August, and I look upon it as warranting all I have said of the mission of Mr. Clay and Mr. Holcombe. They had asked safe conduct to enter hostile territory, and initiate a negotiation "the most momentous"—such is their language—"ever submitted to human statesmanship." If there could be the least doubt of these persons, if what they did and offered to do was against the stomach of the Southern sense, their presumption was boundless indeed, and amounted to an extravagance of indiscretion well deserving the severest chastisement, if indeed their government was to notice such impertinence at all; for you will observe that the object of Mr. Benjamin's paper was to dissipate the impression supposed to be made on the public mind by the statements published by Mr. Jaquess and Mr. Gilmore, and Mr. Clay and Mr. Holcombe's proceedings were not in question in any manner or need not be. Now, what says Mr. Benjamin? You will find at the conclusion of his paper, these words:

"You have, no doubt, seen in the Northern papers an account of another conference on the subject of peace, which took place in Canada at or about the same date, between Messrs. C. C. Clay and J. P. Holcombe, Confederate citizens of the highest character and position, and Mr. Horace Greeley, of New York, acting with authority of President Lincoln. It is deemed not improper to inform you that Messrs. Clay and Holcombe, although enjoying in an eminent degree the confidence and esteem of the President, were strictly accurate in their statement that they were without any authority from this Government to treat with that of the United States on any subject whatever. We had no knowledge of their conference with Mr. Greeley, nor of their proposed visit to Washington, till we saw the newspaper publications."

What does this mean? What is the meaning of saying that these persons, who had volunteered to take on themselves so vast a responsibility, enjoyed in "an eminent degree the confidence and esteem of the President?" Why should Mr. Davis, when they had no authority to treat, and when of their "conference with Mr. Greeley," and "their proposed visit to Washington" to enter upon a treaty, he knew nothing till he "saw the newspaper publications," go out of his way to use this language towards men, who, if what they did was unexpected or unwelcome, as well as unauthorized, were, of all blunderers, the most stupid and the most impertinent? Is this the language of an offended Government, the language of authority which has been trifled with,

which has been falsified and misrepresented by two silly interlopers? Take into account that no man, either in public or private life, commits himself to his proposition until the opposite party is prepared to consider the case, and I do not know what you would have more closely resembling, in diplomatic acceptation, an out and out assent to Mr. Clay's and Mr. Holcombe's declaration that they were "entirely familiar" with "the wishes and opinions" of Mr. Davis on the subject of peace, and that as soon as the safe conduct was forthcoming, Mr. Davis would send them to Washington to negotiate "a peace mutually just, honorable, and advantageous to the North and to the South." These become his own words, the words of Mr. Davis, which before were those of Mr. Clay and Mr. Holcombe only. Recollect that when Mr. Benjamin uses the language I have given you, he wrote with the publication made by Mr. Clay and Mr. Holcombe of their letters containing the statement of what they had said and done, before him. Here is Mr. Jefferson Davis closer to reconstruction than Mr. Abraham Lincoln was ever known to be, or ever will be, so long as he is in their keeping, and can be comfortably lodged, fed and clothed by the Abolitionists. With this in no respect conflict those parts of Mr. Benjamin's paper, in which he refers to the late manifesto of the Southern Congress, and to what Colonel Ould had said, that it was useless to come to Richmond to talk of peace on any other terms than the recognized independence of the Confederacy. This "recognized independence" is a phrase easily construed, it means the point of honor—it means State Rights as understood in the South and as contended for, I may tell you—contended for wrongly, as I think; and as I suppose you think, but still contended for, at different periods of our history, by nearly every State of the Union, more particularly by the New England States, during the war of 1812, to judge for itself and redress its own wrongs when a difference arose between the Federal Government and one of its members—a point, no obstacle at all to peace and Union, and which we have yielded each time we have sent a flag of truce to the South, or exchanged prisoners with them, or treated them as belligerents, or dealt with them in any of the ways recognizing their independent existence, to which we have resorted so often since the war began. Before the South can return to the Union, must they swear to abandon the Resolutions of '98? Shall negotiations for peace with the South be barred, and dirty water thrown out of the window at them, because when they approach us they begin by asking what, whether it be too much or too little, has been the doctrine of every one of the shreds and patches of party which follow Mr. Lincoln, the old Federalists not excepted? Let Mr. Lincoln receive the Southern Commissioners, and we shall see what



there is to differ about; let us know how much they ask of State rights more than we are willing to give. I do not ask every Republican to be as firmly convinced as I am that these two gentlemen who applied to Mr. Greeley and Mr. Hay to procure them a safe conduct to Washington, had they been received, and all idle points of ceremony as to whether the Confederacy is or is not—waived as they are waived when General Grant addresses a letter to General Lee, styling him C. S. A., they would be at this day engaged in the work of reconstructing the Union, or have satisfied us that under Mr. Lincoln's rule it never can be reconstructed; but I do ask any man of them who does not want war for the sake of a war contract, to believe that those Commissioners ought to have been heard, ought to have been safe conducted to Washington, and been received to treat of peace, and I say that if they ought to have been received, and not turned away, the burden lies upon the friends and supporters of the illustrious signer of *To whom it may concern* to show that Mr. Clay and Mr. Holcombe, by "a peace mutually just, honorable, and advantageous to the North and to the South," meant a treaty to us unjust, dishonorable, and disadvantageous, a treaty of separation. It is not necessary to establish it as a fact that the South desire to reconstruct the Union. It is enough to show, to condemn Mr. Lincoln, that he has slammed the door in their faces when they came to say so. He must hear them, he must open the negotiation with them, or we will slam the door in his face in November. It is idle to tell us that these people are bent on separation, that the Richmond and Charleston newspapers say so, and Southern men and women breathe nothing but defiance—they could not breathe at all, if they did not; for, treated with vindictive brutality, as they are, by this Abolition Government, whose barbarous course towards them is dictated by an old party grudge, which, after long festering, has now broken out in open hatred and revenge, they would not have, nor would they deserve to have, to back them in their contest, either politicians, soldiers, or a united country, if they said less, or in the least lowered their key, or moderated their tone. To the cry for their blood they can make no tame answer. You remember what Chatham said in 1777, in his place in Parliament, during the war between his country and the Colonies, as they called us, after denouncing what he called "the rapine and plunder" of America, by British troops. "If I were an American," he went on—"If I were an American, as I am an Englishman, while a foreign troop was landed in my country, I never would lay down my arms—never—never—never." If in this unhappy quarrel, we of the North were the invaded party, and were called upon to surrender or die, who is there

among us who would be so vile as to inquire whether we were right or wrong when the dispute began; who is there who would not resist to the last gasp, and what Northern man is there to-day who would not feel ashamed for his blood, if the South answered to rapine and plunder by throwing down their arms, and submitting? Gentlemen, you and I are Northern men, not Southern men, and if, which God forbid, this base party, which has got us down, and now struggles to keep us under, should succeed, and re-electing Mr. Lincoln, proceed to divide the Union (as they would if they could, to give themselves rest to enjoy their plunder), the Abolitionists would be entitled to demand that we look at the inhabitants of the South with not more kindness than we do at those of Canada, or of Mexico; but till then, armed to the teeth as they are, and fighting us, they are our brothers, and we, of the Democratic faith, will continue to offer to their ambassadors our outstretched arms. But not so Mr. Lincoln, and he is our master,—we are his people, a people who used to be free, but are now only loyal. We take oaths of allegiance, and *he* has an escort of dragoons. Gentlemen, if you want to reconstruct you must change your rulers, for Mr. Lincoln knows that if, instead of insulting the Southern messengers with *To whom it may concern*, he had opened a negotiation with them—or at least those know who manage this ugly puppet, who pull him by the skirts, and twitch him by the sleeves—they know that to open a negotiation with the South, would be, if not to restore the Union, at least to show that the Democratic party could do it, and that would be a very bad card for the election day.

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